108-15

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No ~~144.~~ 7

THE CITY OF NEW ORLEANS, APPELLANT,

vs.

THE NEW ORLEANS, MOBILE AND TEXAS RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED DECEMBER 16, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 144.

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vs.

THE NEW ORLEANS, MOBILE AND TEXAS RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

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1 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

NEW ORLEANS, MOBILE AND TEXAS RAILroad Company
versus
CITY OF NEW ORLEANS. } No. 7972.

TRANSCRIPT FROM STATE COURT—FILED NOVEMBER 1ST, 1876.

State of Louisiana, superior district court for the parish of Orleans.

NEW ORLEANS, MOBILE AND TEXAS RAILroad Company
versus
CITY OF NEW ORLEANS. } No. 26069.

Petition.—Filed July 8th, 1874.

To the honorable Jacob Hawkins, judge of the superior district court for the parish of Orleans:

The petition of the New Orleans, Mobile and Texas Railroad Company, a corporation created by and under the laws of the State
2 of Alabama, and permitted and authorized by the laws of the State of Louisiana to maintain its railway and exercise its rights within the State of Louisiana, respectfully shows:

That by the laws of Louisiana your petitioner has had conferred upon it the right to construct and maintain a railway within this State, and connecting cities of New Orleans and Mobile, coming into the city of New Orleans by the way of Elysian Fields street; thence passing up the levee on the front of the city to Calliope street, and to construct in connection therewith, and for the uses thereof, certain freight and passenger depots, wood-yards, water-tanks, and other necessary buildings and appurtenances have been constructed at great cost, and have been maintained and used for the purposes of commerce to the great advantage of the trade of New Orleans.

That the right of your petitioner to maintain said railway tracks and necessary buildings and appurtenances has been recognized by the hon. the supreme court of Louisiana, in its opinions and decrees de-
3 livered on the 4th of May, 1874, in actions wherein the New Orleans, Mobile and Chattanooga Railroad Company was plaintiff and the City of New Orleans a defendant; by which opinions and decrees an injunction which had heretofore been ordered by said court against said railroad company was set aside, and the plaintiff allowed to remain in possession of Elysian Fields street and the levee below Canal street, and to maintain its railway therein absolutely, and to maintain its railway buildings, &c., on the levee and batture between Canal and Calliope street, and remain in peaceable use and enjoyment thereof, subject to certain rights of the City of New Orleans to be judicially ascertained, as by the records of said suits Nos. 3692 and 3701 of said supreme court will more fully appear.

Now your petitioner shows that, being in lawful and peaceable possession as aforesaid of its said costly and valuable property, the City

of New Orleans, through its officers and agents, on the 9th day of July, 1874, has tortiously, unlawfully, and violently made an attack
4 upon the property of your petitioner in the neighborhood of St. Joseph street, within the space heretofore mentioned, and has begun with a force of about one hundred men to demolish and destroy the fences, buildings, and other property of your petitioner, and is still continuing said unlawful and outrageous acts of violence, and will continue the same to the irreperable injury of petitioner, unless restrained by injunction.

That by said acts of outrage and violence by said defendants petitioner has suffered in damages, counsel fees, loss of business, and injury to property the sum of ten thousand dollars.

Wherefore, in consideration of the premises and the annexed affidavit, petitioner prays that a writ of injunction may issue herein according to law restraining and enjoining the defendant, and each and every one of its officers and employees, from interfering in any wise with the property of petitioner in space heretofore described on the levee and batture between Canal and Calliope streets; from destroying or attempting to destroy any property of petitioner within the
5 limits of New Orleans; from proceeding against petitioner or its property except by due process in the courts of law, and that after due proceedings had said injunction be made perpetual, and for citation of said defendant and judgment against it for ten thousand dollars and interest from judicial demand and all costs, and general and equitable relief.

(Signed) KENNARD, HOWE & PRENTISS, A. MICOU,
Of Counsel.

Affidavit.

D. B. Robinson, being duly sworn, says that he is superintendent of petitioner and in charge of its business in Louisiana, and is duly authorized to make this affidavit, and that the foregoing petition is true; and deponent avers, on information and belief, that an officer of the city of New Orleans, in charge of the work of unlawful violence and destruction described in the said petition, has publicly declared, upon beginning said work, that there were no judges in the city now, and that they "had" the company, and would proceed to destroy said property.

6 (Signed) D. B. ROBINSON,
Superintendent New Orleans, Mobile & Texas R. R.

Sworn to and subscribed this 8th day of July, 1874.

(Signed) JACOB HAWKINS, *Judge.*

Order.

Let an injunction issue herein as prayed for, and according to law, on petitioner's giving bond, with good and solvent security, in the sum of one thousand dollars.

New Orleans, July 8th, 1874.

(Signed) JACOB HAWKINS, *Judge.*

Injunction bond.

Know all men by these presents that New Orleans, Mobile and Texas Railroad Company, as principal, and Albert Baldwin, as surety,

of the city of New Orleans and State of Louisiana, are held and firmly bound unto the City of New Orleans and its successors, executors, administrators, heirs, and assigns in the sum of one thousand dollars lawful money of the United States of America, to be paid to the said
7 City of New Orleans and its successors, executors, administrators, heirs, and assigns we bind ourselves in solido, and each of us by himself, and each of our executors, administrators, heirs, and assigns firmly by these presents, sealed with our seals and dated the eighth day of July, 1874.

Whereas the said New Orleans, Mobile and Texas Railroad Company has this day presented a petition to the honorable the superior district court for the parish of Orleans, praying for a writ of injunction to issue against said City of New Orleans:

Now, the condition of the above obligation is that we, the above-bound New Orleans, Mobile and Texas Railroad, principal, and Albert Baldwin, surety, will well and truly pay to the said City of New Orleans and its successors, the defendant in said injunction, all such damages as said defendant may recover against us in case it should be decided that the said injunction was wrongfully obtained.

(Signed) NEW ORLEANS, MOBILE & TEXAS R. R. Co., [L. S.]
By D. B. ROBINSON, *Sup't'd't.*
8 ALBERT BALDWIN. [L. S.]

Signed, sealed, and delivered in the presence of—
A. MICOU.

Writ of injunction to be served on City of N. O.

State of Louisiana, superior district court for the parish of Orleans.

NEW ORLEANS, MOBILE AND TEXAS R. R. Co.
versus
CITY OF NEW ORLEANS. } No. 26069.

State of Louisiana to the City of New Orleans, thro' L. A. Wiltz, mayor, greeting:

You are hereby commanded, enjoined, and restrained, in the name of the State of Louisiana and of the superior district court of the parish of Orleans, from interfering in any wise with the property of petitioner in the space, to wit, on the levee and bat'ure between Canal and Calliope streets, and in the neighborhood of St. Joseph street; from destroying or attempting to destroy any property of petitioner
9 within the limits of New Orleans, and from proceeding against petitioner or its property, except by due process in the courts of law.

And you are so enjoined until the further order of this honorable court.

Witness the honorable Jacob Hawkins, judge of our said court, at the city of New Orleans, this 8th day of July, in the year of our Lord eighteen hundred and seventy-four, in the ninety-ninth year of the Independence of the United States.

(Signed) J. J. HANNAN,
D'y Clk.

Sheriff's return.

Received July 8th, 1874, and on the same day, month, and year, at about 10.10 a. m., I served a copy of the within writ of injunction on

City of N. O., through L. A. Wiltz, mayor, and on James Lewis, administrator, both in person.
Returned same day.
Sh'ff's fees, $2.00.
(Signed) EUGENE AUBERT,
D'y Sh'ff.

10 *Citation to be served on the City of New Orleans.*

State of Louisiana, superior district court for the parish of Orleans, in the city of New Orleans.

NEW ORLEANS, MOBILE AND TEXAS R. R. CO.
vs.
CITY OF NEW ORLEANS. } No. 26069.

City of New Orleans, thro' L. A. Wiltz, mayor, New Orleans, La.:
You are hereby commanded to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the superior district court for the parish of Orleans within ten days after the service hereof.
Witness the honorable Jacob Hawkins, judge of the said court, this 8th day of July, in the year of our Lord 1874.
(Signed) P. E. BURKE,
D'y Clerk.

Sheriff's return.—Filed July 10th, 1874.

Received July 8th, 1874, and on the ninth day of same month
11 and year served a copy of within citation and accompanying petition on the City of New Orleans, defendant herein, through the honorable Louis A. Wiltz, mayor, in person.
Returned same day.
Sh'ff's fees, $2.00.
(Signed) P. M. LACOSTE,
D'y Sheriff.

Motion.—Filed July 18th, 1874.

Superior district court for the parish of Orleans.

NEW ORLEANS, MOBILE AND TEXAS R. R. CO.
versus
CITY OF NEW ORLEANS. } No. 26069.

On motion of Geo. S. Lacey, city attorney, and upon suggesting and showing to the court—
1st. That the injunction herein obtained has the effect of obstructing and closing from public use and enjoyment the public streets and thoroug'fares hereafter named, to wit, Notre Dame and St. Joseph street' between Water and Pilie streets, as shown by the plan of the city surveyor herewith filed; which streets it is not only the right but
12 the duty of the city of New Orleans to keep open for the uses and convenience of the public;
2d. That the opening of such streets, which is the act prohibited by the injunction, cannot work an irreparable injury to the plaintiffs;

3rd. That the City of New Orleans, under section 33 of the city charter, has the right to a dissolution of an injunction under article 307, Ray's Code of Practice, without giving bond and security;

It is ordered that the New Orleans, Mobile and Texas R. R. Company show cause on Thursday, the 23d day of July, A. D. 1874, at 11 o'clock a. m., why the injunction herein granted should not be dissolved upon giving bond under article 307 of the Code of Practice.

Copy of rule to be served on New Orleans, Mobile and Texas R. R. Co.

State of Louisiana, superior district court for the parish of Orleans.

SATURDAY, *the 18th day of July*, 1874.

Present, Hon. Jacob Hawkins, judge.

NEW ORLEANS, MOBILE AND TEXAS RAILROAD CO. *versus* CITY OF NEW ORLEANS. } No. 26069.

13

On motion of George S. Lacey, city attorney, and for reasons on file, it is ordered that the New Orleans, Mobile and Texas R. R. Co. show cause on Thursday, the 23d day of July, 1874, at 11 o'clock a. m., why the injunction herein granted should not be dissolved, as upon giving bond, under Article 307, Code of Practice.

A true extract from the minutes.

P. E. BURKE,
Deputy Clerk.

Sheriff's return.—Filed July 23d, 1874.

Received July 20th, 1874, and on the second day same month and year served a copy of the within rule on the New Orleans, Mobile and Texas R. R. Company, plaintiffs herein, by delivering the same to E. P. Shute, assistant superintendent, a person apparently over the age of fourteen years, in the office of said company, in the depot of the N. O., M. & T. R. R. Co. at the foot of Girod street, near the levee, in the first district of the city of New Orleans, said E. P. Shute being present and in charge of and employed in said office, there being on the door of said office the words "New Orleans, Mobile and Texas R. R. office, general ticket agent, general superintendent, and chief engineer" painted thereon, there being neither the president, secretary, treasurer, director, or designated agent of said company, defendant herein, present in said office or depot building; the facts I ascertained at the time by interrogating the said E. P. Shute.

14

Sh'ff's fee, 50c.

Returned same day.

FRANK PFISTER,
Deputy Sheriff.

Continuance.—Extract from minutes.

THURSDAY, *July 23d*, 1874.

Pres't, Hon. B. L. Lynch, judge of the honorable the fourth district court, acting in the absence of the Hon. Jacob Hawkins, judge of this court.

NEW ORLEANS, MOBILE AND TEXAS R. R. } No. 26069.
versus
CITY OF NEW ORLEANS.

15 The rule herein taken by the City of New Orleans to dissolve the injunction herein granted was taken up for trial, but in the absence of counsel, and on the suggestion of Geo. S. Lacey, city att'y, the court ordered that this cause be continued until Tuesday next, the 28th day of July, 1874.

Testimony and note of evidence on application to bond.

TUESDAY, *July 28th*, 1874.

Present, Hon. Jacob Hawkins, judge.

NEW ORLEANS, MOBILE AND TEXAS R. R. Co. } No. 26069.
versus
CITY OF NEW ORLEANS.

Williamson states, on being shown map marked A, that it is a map compiled by the New Orleans, Mobile and Texas R. R. Co.; it is a map under which the New Orleans, Mobile and Texas Railroad Company claim what they own by purchase, and claim by grant. The map is recognized by the company as a true exhibit of that portion of the bat'ure which is exhibited upon it.

Pilie street is full of railroad tracks, and is parallel with the
16 river front, and is utterly impassable.

The squares which are marked by dark lines are owned by notarial act by the company.

The others marked by dark lines are claimed by grant.

Notre Dame at the time of its opening was very low and hollow, and well filled in and placed in condition by the company.

The obstructions on St. Joseph street are four (4) water-tanks, which are used for the purpose of supplying the engines used by the company with water.

We have further down a wood-shed.

The removal of these water-tanks would prevent the trains from going out.

The water-tanks are on a prolongation of the lower line of Water street; there are four tanks; the platform is almost entirely on the private property of the company. The street is very narrow, without pavement, ditches, &c.

The map B, I think, shows nearly the position of the company's buildings. The construction on Notre Dame street is a brick
17 warehouse composed of solid brick, with platform. This map exhibits the portions of grounds and buildings owned by the company, the square and streets as they existed at the time the same were purchased by the said company.

City of New Orleans, through its attorney George S. Lacey, offers in evidence maps marked "A & B."

New Orleans, Mobile and Texas R. R. Co. offers in evidence the testimony in the form of an affidavit of D. B. Robinson; also decree of the supreme court of Louisiana, No. 3701, of that court, same being marked "C."

Testimony of D. B. Robinson.

D. B. Robinson, being sworn, deposes and says that he is the superin-

tendent of the New Orleans, Mobile and Texas R. R., at present in charge of the same, and that the destruction, damages, loss, and injury which would be caused by the City of New Orleans to the New
18 Orleans, Mobile and Texas R. R. Co., in opening the streets of St. Joseph and Notre Dame through to Pilie street, by the demolition, destruction, and removal of the buildings and appurtenances of said railroad and destruction of its business and engagements and contracts as follows:

That the destruction caused by the opening aforesaid by said City of New Orleans of said St. Joseph street would involve the demolition and removal of some five large cisterns, located in a large building, and the destruction of the wood-yard and house of the said railroad; that the said railroad is wholly dependent for the daily running of its trains, transactions of its business as a public carrier, and for the fulfilment without violations, with heavy penalty of its contract for the transmission of the United States mail and mail service, upon the said water-cisterns and said wood-yard, whereby the engines and locomotives of this railroad, whose use is indispensable as aforesaid to its busi-
19 ness duties and contracts, are alone supplied at this location with wood and water.

That the destruction of said water-cisterns and wood-yard would result in damages and loss to the railroad in its business, contracts, and duties which would render the City of New Orleans liable in damages to be hereafter ascertained, and would directly work an irreparable injury and loss to the New Orleans, Mobile and Texas R. R. as aforesaid, as well as causing the railroad great loss and damages in the destruction of its buildings, tenements and property and appurtenances, for which the City of New Orleans would be also responsible in damages.

That the opening of Notre Dame street would pierce and divide the freight depot of said railroad and prevent the daily transactions of its freight business.

(Signed) D. B. ROBINSON.

Sworn to and subscribed before me this 28th day of July, 1874.

(Signed) J. J. HANNAN,
Deputy Clerk.

20 *Decision of the supreme court of Louisiana marked "C," offered in evidence and filed July 28th, 1874.*

Superior district court, parish of Orleans.

NEW ORLEANS, MOBILE AND TEXAS R. R. CO.
versus
CITY OF NEW ORLEANS.

Supreme court of the State of Louisiana.

CLERK'S OFFICE,
New Orleans, May 4th, 1874.

N. O., M. & C. R. R. Co.
vs.
CITY OF NEW ORLEANS. } No. 3701.

Appeal from the eighth district court, parish of Orleans, No. 4.

Mr. Justice HOWELL delivered the opinion and decree of the court, n the words and figures following, to wit:

On rehearing:

The plaintiff company enjoined the City of New Orleans from leasing or selling, and from interfering with plaintiffs in occupying and enjoying, holding, and acquiring certain lands granted to the plaint-
21 iffs by and described in the following clause of section 15 of act No. 260, 1869, to wit:

"And there is hereby granted to the said company the right to locate, construct, maintain, and use a passenger-depot, with office and apartments, suitable for its legitimate business, upon the part or portion of the levee or streets and grounds in the city of New Orleans bounded by Canal, Delta, and Poydras st's, and a line parallel to, and one hundred and fifty feet easterly from, Delta street; and for the construction of a freight-depot, and for other purposes of its legitimate business, to enclose and occupy the blocks of ground, parts of street, and portion of levee in said city bounded by Girod, Water, and Calliope streets, and a line parallel to, and two hundred and ninety feet easterly from, Water street, provided said company shall not enclose or occupy that part or portion of the blocks of ground within said last-named limits, which is the private property of individuals, until said company has acquired the title thereto." The plaintiffs allege that they have
22 acquired by purchase all of the private property within the boundaries of the said grant.

The only answer filed by the city to the original and supplemental petition to plaintiffs this suit is a general denial. The other answers are to the intervention of Charles Morgan, and this branch of the suit has been disposed of, and is not before us, but the question presented and discussed by both parties is the right of the State to make the said grant, the city claiming to be the owner of said grant, subject only to a servitude in favor of the public as long as it may be needed for public purposes, and the State asserting absolute ownership and control of the lands as public places.

If they be "public places" in the ordinary legal signification of these words it may that the State has the control asserted. We will here inquire into the rights of the city as to the lands.

In 1820 the bat'ure and that portion of the city was owned or claimed by the heirs and assigns of one Bertrand Gravier as riparian
23 proprietors, and there being some difficulty with the city as to the ownership and use thereof, the parties entered into a compromise by notarial act in September of that year, by which it was stipulated that all lots of ground outside of a certain line should remain inalienable and be used for no other public purposes than those for which they are naturally destinated.

When in 1836 the city was divided into municipalities it was provided that no disposition should ever be made of the said batture in violation of said compromise, and that the second municipality in which it was situated should not obstruct the inhabitants of any of the city in the free use thereof.

By the continued accessions this space of ground became inconvenient for public use, and in 1850 the legislature repealed that portion of the act of 1836 prohibiting any disposition thereof, authorized and directed the second municipality to lay off two additional streets according to a certain plan, declared that the balance of the bat'ure should be left open, and so kept for the accommodation of the
24 public and the convenience of commerce, and that in the event of the agreement of the original parties to the said compromise for the sale of the said bat'ure it should be the duty of the second mu-

nicipality to lay off in lots all not needed for streets and public purposes as above, and dispose thereof on terms to be agreed on, provided one-third of the proceeds should be appropriated to the general sinking-fund of the city.

In pursuance of this act the said parties, with the second municipality, which was represented by a committee, agreed by notarial act on 20th June, 1851, to change the destination made in the compromise of September, 1820; that three streets should be laid out, certain squares divided into lots and sold at auction within dif'erent periods of time and on specified terms, which sale should be binding on the parties then contracting with the second municipality as vendors; that the proceeds be divided into three parts, one to be paid to the said original parties, one to the general sinking-fund of the city, the other into
25 the treasury of the second municipality; that three specific squares be reserved for market-houses, and that portion not divided into lots for sale should be, in the language of the act, "vested in perpetuity and full ownership in said municipality No. 2," in favor of whom the said parties then contracting therewith ceeded and relinquished forever all the claims in and to the said bat'ure, as well as all and every enlargement thereof, or ac'retion thereto, by new formation.

It is by this act, it is contended, the city, which has succeeded to the rights of the second municipality, acquired the title to and full ownership of the ground now in controversy.

The title, it would seem, was thereby vested in the city so far as the original owners, parties to the above act, could confer it, and the property is under the exclusive control of the city as owner for the benefit of the inhabitants, and subject to the servitude in favor of commerce if needed, unless there is in law some such relation between the
26 municipal corporation and the State as maker, all property acquired by corporation the property of the State and subject to its control.

Is this so?

A municipal corporation is appropriately defined to be "the investing the people of a place with the local government thereof." Salk, 183.

It has no power not conferred upon it expressly or by fair implication by the law of the State creating it. Both the persons and the place inhabited by them are indispensable to the constitution of such a corporation. It is an agency to regulate and administer the internal concerns of a locality in matters peculiar to the place incorporated and not common to the State or people at large; but duties and functions may be and are conferred and imposed not local in their nature; it possesses two classes of power and two classes of rights, public and private.

In all that relates to one class it is merely the agent of the State, and subject to its control; in the other it is the agent of the inhabitants of the place; the corporators maintain the character and relation
27 of individuals, and is not subject to the absolute control of the legislature, its creator. Among this latter class is the right to acquire, hold, and dispose of property, to sue and be sued, &c. It is true that these rights are originally derived from the legislature; but once conferred they are to be exercised while it exists at the will of the corporation, in its own and as to its own interest, for the inhabitants, just as certain rights are conferred on private corporations not sui juris, as minors and married women, but are not afterwards under the control of the legislature.

Jillon on Municipal Corporations, 2d ed., chap. II, §§ 9[a] to 10[a]; chap.

IV, §§ 38–40 & notes. Cooley's Constitutional Limitations, pp. 235–'6, 238.

In § 39 Mr. Dillon says: It may assist to an understanding of the extent of legislative power over municipal corporations proper (incorporated towns and cities) to observe that these as ordinarily constituted possess, according to many courts, a double character, the *own*
28 gover'mental legislation or public; the other in a sense proprietary or private. The distinction between these, though sometimes difficult to trace, is highly important, and is frequently referred to, particularly in the cases relating to the implied or common-law liability *or* municipal corporations for the negligence of their servants, agents, or officers in the execution of corporate duties and powers.

In its gover'mental or public character the corporation is made by the State one of its instruments, or the local depository of certain limited and prescribed political powers to be exercised for the public good, on behalf of the State, and not for itself. In this respect it is assimilated, in its nature and functions, to a county corporation, which, as we have seen, is fully part of the governmental machinery of the sovereignty which creates it. Over all its civil, political, or gover'mental powers the authority of the legislature is, in the nature of things, supreme and without limitation, unless the limitation is found in some peculiar provision of the constitution of the particular State.
29 But in its proprietary or private character the theory is that the powers are supposed not to be conferred finally or chiefly from considerations connected with the government of the State at large, but for the private advantage of the particular corporation as a distinct legal personality, and as to such powers and to property acquired thereunder and contracts made with reference thereto the corporation is to be regarded as, quo ad hoc, a private corporation, or at least not public in the sense that the power of the legislature over it is omnipotent.

Mr. Cooley, at page 238, says:

"The rule upon the subject we take to be this: Where corporate powers are conferred there is *a* an implied compact between the State and the corporation that the property which they are given the capacity to acquire for corporate purposes, under their charter, shall not be taken from them and appropriated to other uses. If the State grants property to the corporation the grant is an executed contract,
30 which cannot be revoked. The rights acquired, either by such grants or by an' other legitimate mode in which such a corporation can acquire property, are vested rights and cannot be taken away."

In 29 Vermont, p. 12, it was said:

"But while the legislative power (to enlarge, restrain, or even destroy municipal corporations, as the public interests may require) may be exercised over public and municipal corporations, it has uniformly been held that town and other public corporations may have private rights and interests vested in them under their charter, and as to those rights they are to be regarded and protected the same as if they were the rights and interests of individuals or private corporations."

In 18 Cal., 590, Mr. Chief Justice Field, as the organ of the court, takes the ground that the real estate or private property of a municipal corporation is protected by the clause in the National Constitution, the inviolability of contracts; that all legislative authority
31 over it must be exercised in subordination to this guaranty, and

that it is subject to legislative control to the same extent, but no greater extent, than all other property in the State.

In 9 Cranch (U. S.), 336 & 52, Mr. Justice Story expresses the opinion that, "in respect to public corporations, which exists only for public purposes, such as counties, towns, cities, &c., the legislature may under proper limitations have a right to change, modify, enlarge, or restrain them, securing, however, the property for the uses of those of whom and at whose expense it was originally purchased."

This is reiterated by Chancellor Kent, 2 Com., 305, & by Mr. Justice Washington, in Dartmouth College case, 4 Wheat., 518, 663. In this last case Mr. Justice Story, at page 694, says: "But it will hardly be contended that, even in respect to such corporations, the legislative power is so transcendent that it may at its will take away the private property of the corporation, or change the uses of its private
32 funds acquired under the public faith."

In 18 L., 213, it is said: "Urban property fronting on a water course is entitled to alluvian as well as rural estates; and cities may acquire June alluvians, but it must be as proprietor of the front, or riparian proprietor." (See also 10 a 54 & 7 A., 505.)

We are aware that very different views have been expressed by very high authority, and that some of the authors and jurists from whom we have quoted have used language susceptible of a different construction, and declared the aversion of municipal powers into public and private unsatisfactory, but after a careful consideration of the opinions on both sides we have come to the conclusion that a municipal corporation may own property to and over which the legislature has, while such corporation exists, no right or control in opposition to or independently of the will or consent of the corporation; and we think this is consonant justice.

33 There is a principal involved in it. The principal that those who have to pay should have a voice in the disposal of what is paid for; a principal which is a barrier to centralized or organized power; a principle that protects every person in the control of his own private affairs; a principal which the judiciary intended to maintain.

The theory or argument that the legislature has absolute ownership and control of all the property and rights of a municipal corporation because the corporation is represented in the legislature is not conclusive.

Such representation is only in matters properly within legislative action, just as the representation of all other portions and inhabitants of the State.

The private rights of the corporation are as much protected as those of individuals, and it is a fact, manifest to all, that the incorporation of such a city as New Orleans is a necessity. The multiplying and complicated interests of the compact and increasing community
34 are such that the legislature cannot administer them, and some of them are of such a nature as not to be within mere legislative action, but are to be conducted under general rules, thus necessitating the creation of an intellectual body, with something more than governmental functions; but which do not constitute an imperium in imperio.

If, then, a municipal corporation can acquire the fee-simple of property, we think the squares intended for the depots of the plaintiffs were so acquired, and this cannot be taken by the legislature while the city corporation exists.

The legislature expressly recognized and ratified the compromise of

September, 1820, in which the parties donating or destinating acted as riparian proprietors, and in the act 257 of 1850 the section of the act of 1836 prohibiting the violation of said compromise was repealed, and the municipality No. 2 was authorized to enter into an agreement with the said parties "for the sale of the said batture" on cer-
35 tain conditions, which were complied with. If it be urged that the third section of said act of 1850 required the portion not then laid off into streets to be kept open forever for commerce, the answer is, that act No. 333 of 1853 authorized the withdrawal therefrom of such as may not be needed for public uses, and this has been done by the city (which cannot sue itself), in the subsequent laying off of other streets, and selling two and half squares in the block of square (within the State grant) nearest the river, and which had been purchased by the plaintiffs. All this is recognized by the legislature in the act under which plaintiffs now claim, by requiring them to purchase, and by them in making the purchases; while this legislation may be construed as making such recognition, it can be invoked in aid or support of the power to make this grant only on the theory that the city owned the property simply as the agent of the State, a theory which we do not adopt as to this property, because we think the
36 city can own private property, and that the former owners intended to, and did, by the act of 20th June, 1851, transfer the title thereof to the city, subject only to the uses of commerce and of the public while so needed.

And such must have been the opinion of the plaintiffs when they made the offer which they allege to purchase a part of this very ground from the city, about the time this suit was instituted; and their petition seems to be constructive on the hypothesis that the city had such rights to the said property as to make a resort to the laws relative to expropriation necessary.

The act of 1850 may have been necessary to give the municipality No. 2 the authority to enter into an agreement with the owners, but the power having been exercised, and the conditions complied with, the title of said parties (which was recognized in the said act) vested by the notarial act of June, 1851, as we think, in the municipality which then took the place of the said former owners, with all their rights, including the right to bring into commerce such portions
37 as might become necessary for public use.

It is contended, however, that the case of Parish vs. Municipality, 8 A., 145, fixes the character of the ground in question as a locus publicus in the technical sense of this term, and intimates that so much of the act of 1850 as may confer any rights upon the municipality is unconstitutional.

An examination of that case will show that the matter in controversy was the servitude of view and way claimed by plaintiff, and that the case went off on an exception; that plaintiff had no cause of action. The right therein asserted of the legislature to change the distinction of a portion of the batture previously dedicated to the public use is not denied; but this is not inconsistent with the right of the riparian proprietor to sell his property and his right, or that of his vendee to withdraw that property from the position of a locus publicus, when not needed as such under existing legislation.

The antecedent cases had reference to the legislation and the rights of parties thereunder prior to the act of 1850 and the transfer of
38 June, 1851, under which the rights of the city have acquired. But in those cases the rights of riparian proprietors to the batture

were recognized subject to a public servitude, and the ownership of the city as against said proprietors was denied. Judge Martin, however, in 18 L., 249, contended that the formations in front of the city did not belong to owners of the lots along a certain line, but vested in the city, and he insisted that his views were sustained by the decision of the United States Supreme Court in 10 Peters, 662.

The majority of the court decided in favor of the riparian proprietors; and we think these parties have conveyed their rights to the portion of the batture now in controversy to the city, for the inhabitants; that those rights are protected by the constitution now just as those of the former owners were, the city having the capacity to own property for the exclusive use and benefit of the inhabitants, and having acquired all the rights of the former owners, and that the city or inhabitants cannot be compelled to contribute the squares of ground
39 in question to the plaintiff without compensation.

Whether they will or not make such contribution voluntarily, in consideration of the benefit resulting from the establishment of the railroad, is a question not pertinent here; we are to pass only on the legal rights of the parties.

In our opinion, the injunction improperly issued in this case. But as the city has made no claim against the plaintiffs, our former decree was erroneous in granting a demand in reconvention and inhibiting the plaintiffs from occupying the property in controversy. Under the pleadings all we can do is to render judgment in favor of the city, dissolving the injunction and dismissing plaintiff's suit, leaving the parties to their rights under the laws relative to the expropriation of property.

It is therefore ordered that our former decree be set aside, and it is now ordered that the judgment appealed from be reversed, and that there be judgment in favor of the defendant, the City of New Or-
40 leans, dissolving the injunction herein and dismissing plaintiff's suit, with costs, in both courts, without prejudice to the rights of the parties under the laws of expropriation.

Mr. Justice Wyly concurs in this decree for the reasons given by him in the former opinion of the court.

A true copy.

[SEAL.] (Signed) M. P. JULIAN,
Deputy Clerk.

N. O., M. & C. R. R. Co.
vs.
THE CITY OF NEW ORLEANS.

Chief Justice Ludeling, dissenting:

In February, 1869, the general assembly of the State of Louisiana passed an act whereby was granted to said company "the right to locate, construct, maintain, and use a passenger depot, with office and apartment suitable for its legitimate business, upon the part or portion of the levee or streets or grounds in the city of New Orleans bounded by Canal, Delta, and Poydras streets and a line parallel to and one
41 hundred and fifty feet easterly from Delta street, and for the construction of the freight depot, and for the purpose of its legitimate business to enclose and occupy the block of ground, parts of streets, and portion of levee in said city bounded by Gerod, Water, and Calliope streets and a line parallel to and two hundred and ninety feet easterly from Water street; provided said company shall not en-

close or occupy part or portions of the blocks of ground, within the said last-named limits, which is the private property of individuals, until said company has acquired the title themselves."

Learning that the city of New Orleans was about to pass an ordinance to cede away a part of the batture or levee which, in the act of 1869 aforesaid, the State had authorized the company to use for its freight and passenger depots, the company enjoined the city from passing the ordinance, &c.

The city claims to have the perfect ownership of the property in question, and to be alone authorized to dispose of it, without
42 any right on the part of the State to control its disposition.

If it were conceded that the city had a perfect title as owner to the batture, its pretension to absolute control over the property, unrestrained by the general assembly of the State, would be unfounded in law and in fact. It cannot be disputed that the general assembly has the power to abolish the charter of the city, and to control its property for the benefit of the public through other agents. As a matter of fact, the legislature could do this if it choose, and the court would be powerless to prevent it. And the right of the general assembly to control property of a municipal corporation dedicated to public use is not less clear.

The Supreme Court of the United States said (in the case of New Orleans vs. United States, 10 Peters, 772): "It cannot be insisted that the dedication of this property to public use, whether the title to the thing dedicated become vested in the city or only its use, could withdraw it from the political jurisdiction of the sovereign power."
43 And in the same case it is decided that this sovereign power is the State. (See p. 737.)

This right of the general assembly is a part of the governmental or political power of the State, which is in no way subordinate to the municipal corporation.

The city of New Orleans, if owner of this batture, is only the agent of the State; any control which it exercises over the property is a police or governmental power, delegated by the State, subject to its control, and to be exercised only in subordination to its will.

(Police Jury vs. Shreveport, 5 An., 691; 24 Ann., 242; 1 An., 167; 3 An., 306; 12 An., 515; 14 An., 406; 27 New York, The People vs. Kerr, 188; Cooley's C. L., 191; Dillon on Corporations, p. 170.)

In Reynolds vs. Baldwin this court said: "In the country from which we derived our ideas, on the subject of municipal corporations, the charters of cities were, as their name implies, contracts entered into between the corporators on the one hand and the king or
44 feudal lord on the other, by which liberties and franchises were bartered for personal service or money. The rights and powers which those charters conferred were by the nature of those secured to the people at large by our constitution. They were intended to be permanent and could not be lawfully taken away; they were, in the true sense of the word, franchises.

"But the relation existing between our municipal corporations and the sovereign is not the same, and it is strange that this fact should continue to be so obstinately by their officers," And the court adds, referring to the 33d section of the old constitution: "This provision constituted the municipal government of this city a subordinate agency for purposes of police and good order. The laws which under that provision have established and regulate municipalities are not contracts; they are ordinary acts of legislation. The powers they confer are no longer franchises, in the ordinary meaning of that word; they are

nothing more than mandates, and those laws may be repealed at
45 pleasure, except so far as their repeal may affect rights acquired by third persons under them; they are all of the same nature and must be construed and applied in all cases like other laws." (1 An., 168.)

But the city has not the fee simple or perfect ownership in the property in question; it is a public thing.

Ordinarily the judicial admissions to parties to a suit are conclusive against them. A judicial admission solemnly made cannot be denied. (4 An., 416; 11 An., 710; 4 M., 280.)

If this rule of evidence be not ignored, it will be sufficient to refer to the answer of the city, found on page 45 of the record, to prove that the property in question is a public thing.

The city declares "that all that portion of real estate or ground claimed by intervenor situated above Canal street, and embraced by ordinance 1492, forms a part of the batture, lying in the old faubo'rg St. Marie, and that on or about the twentieth day of September, A. D. 1820, a certain act was passed into and by and between
46 Edward Livingston and the riparian proprietors, and the city of New Orleans, wherein and whereby the entire alluvian or batture in front of the aforesaid suburb St. Marie, and the accretions thereafter to become attached to the same, were dedicated to public use and the purposes of business and commerce, and upon the express understanding and condition that the same should thereafter remain and continue a locus publicus, out of commerce, and not to be affected by any adverse claim or grant which might be set up against the same. That for many years anterior to the authentic act of dedication above referred to, and more than fifty years previous to the passage of the acts of the legislature of the State of Louisiana referred to in the intervenor's petition, certain riparian proprietors owning property in the said faubo'rg St. Marie, without any particular form or ceremony, converted the entire batture in front of such suburb a locus publicus, and set the same apart for the use of the public, composed almost entirely of citi-
47 zens of the United States, upon the condition that the batture thus informally dedicated should remain to be solely appropriated to that purpose."

And in the original briefs the counsel for the city reiterated these admissions. How then can the city be permitted now to deny that the property is a public thing? What are public things?

The code declares public things are those the property of which is vested in a whole nation, and the use of which is allowed to all the members of the nation; of this kind are navigable rivers, sea-ports, roads, harbors, highways, and the beds of rivers as long as the same is covered with water. (C. C., article 453.) "Things which are for the common use of a city or other place, as streets and public squares, are likewise public things." (C. C., 455.) Things which belong in common to the inhabitants of cities and other places are of two kinds:

Common property to the use of which all the inhabitants of a
48 city or other place, and even strangers, are entitled, in common, such as streets, public walks, the quays.

And common property which, though it belongs to the corporation, is not for the common use of all the inhabitants of the place, but may be employed for their advantage by the administrators of its revenues. (C. C., 458.)

"Private estates or fortunes are those things which belong to indi-

viduals." "Les choses qui sont dans le domaine de chaque individu forment les riens et les richesses particulières." (C. C., 450.)

These citations from the code show (according to my understanding) that the property in question is a public thing, and that a city cannot own private estates or fortunes.

All its property comes under one of the two classes of public things mentioned in article 458.

And whether the city can acquire or alienate property depends upon the will of the legislature, expressed in the charter or some other legislative act; and this power can be revoked or resumed at will by the State.

49 The history of the rights of the city to this batture shows conclusively that it was dedicated to the public.

In 1763 the Jesuits' plantation was confiscated and sold by the French. The first lot on the plan was sold to Pradel, and was conveyed by him to Bertrand Gravier. Gravier laid off lots previous to his death. After his death the tract was adjudicated to John Gravier, one of his heirs, who sold to Edward Livingston. In 1805 a partition suit was brought, in the name of "John Gravier against The Mayor, &c., of New Orleans," on account of the pretensions the city had set up to this property. In 1807 the superior court decided that the evidence in the case showed that Gravier was the riparian proprietor. In 1809 the coheirs of John Gravier sued him to set aside the adjudication made in his favor and for a partition of the property of Bertrand Gravier. (See 6 Mact., 281.)

In the same year the suit of Morgan vs. Livingston and others
50 was decided. It was determined in that case that there was no batture formed at the time Gravier's sales were made, and that whatever of riparian ownership he had passed with those sales. In 1820, and in all probability in consequence of that decision, the compromise between the Gravier and Livingston party and the city was made.

In all these proceedings the State, as representing the public, had never been a party.

In 1836 the city charter was amended, and this compromise was tacitly ratified by the State. In 1850 an act of the legislature authorized the sale of two lots of theirs in front of two streets, to be laid off on the batture in front of New Levee street, and directed what disposition should be made with the proceeds of the sales.

The same act declares that the batture or space of ground adjoining the Mississippi River and the street to be laid off, &c., fronting said river "shall be left open, so kept for the accommodation of the public and the convenience of commerce." (Acts of 1850, p. 197.)

51 The parties to the compromise of 1820 accepted the terms of this act, and, if not before, this batture was then dedicated to the public by all concerned.

But in Municipality vs. Cotton Press, 18 La., 230, this court, referring to the case of Municipality No. 1 vs. Municipality No. 2, 12 La., 491, relating to this batture, says: "In that case there was an express dedication to public uses of the alluvian in front of suburb St. Mary by a formal contract between the city and front proprietors; and the act of 1836 refers to and sanctions that compromise, and expressly provides that the municipality of the upper section of the city of New Orleans shall not, in any manner, obstruct or impede the inhabitants of any portion of the city in the free use and enjoyment of their rights on the batture. With such legislative injunction, how could the mu-

nicipality, with any propriety or consistency, pretend to be the exclusive owner of a locus publicus which it was their duty to admin-
52 ister according to its destination?" (18 La., 230; see also Packwood vs. Walden, & Cockran et al. vs. Fort et al., 7 N. S., 86 & 626.)

In the case of Delabigane vs. Second Municipality, decided in 1848, it had been expressly decided that the batture had been dedicated to the public use, and that the attempt of the municipality "to change the destination of the ground was a glaring usurpation of power, from which no legal effects could result." (3 An., 239.)

And this decision no doubt led to the passage of the act of 1850 aforesaid.

In 1851 the case of Parish vs. Second Municipality was decided. In that case the plaintiff complained that the act of 1850 was unconstitutional, pretty much on the same ground urged now against the act of 1869.

The court decided that the property was a public place and that the legislature had the right to alter the destination. (8 An., 145.)

The other cases which follow adopt this conclusion without
53 discussion. (10 An., 54; 12 An., 500; 13 An., 154; 10 Peters, 662.)

If an unbroken chain of decisions of this court for upwards of half a century can settle the question about that seemingly endless source of litigation, the batture in front of the city of New Orleans, it has been settled that the batture is a public thing.

I understand that a majority of my associates do not deny that the State alone can control "public things."

The jurisprudence of this State and of most of the other States of the Union is settled, that the sovereign alone has the right to control public places or to change the destination of public things. (5 La., 132; 13 La., 326; 18 La., 218; 3 An., 230; 8 An., 149.)

In the case last mentioned this court said: "As we held in the case of the State of Louisiana versus The Executors of McDonough et al., such a stipulation was at all times under the control of the legislature, who could modify the effects of it, and change the destination of the
54 property whenever such a change became of public advantage. Its power to change the destination of it was expressly recognized by us in the case of Delabigane vs. 2d Municipality. The power of the legislature to change the destination of public places had been previously recognized in the case of De Armas vs. The Mayor et als.; The Mayor vs. Hopkins; New Orleans vs. U. States; and Municipality vs. Cotton Press. These cases were all argued by the ablest counsel at the bar, and the opinions of the court were prepared with uncommon care. In two of them Judge Martin dissented on other points, but the court was in all the cases unanimous in recognizing the power of the legislature to change the destination of the quay, and of the batture in front of the city of New Orleans," &c. (P. 149; 5 An., 661; Cooley, Lim., 552; 2 Dillon, § 511; 4 Pet., 232; 45 N. York, 234; 1 Redf., 260; 22 Miss., 13; 20 Mo., 192; 18 Cal., 490; 13 Ill., 30; 31 N. Y., 164, 202; 8 Dana, 50; 12 Ill., 60; 15 Texas, 388.)

55 If the general assembly had the power to control the quay and batture in front of New Orleans in 1851, when and how has it lost this power?

I come now to enquire whether there be any difference in the power of the State to grant lands for depots and privileges to use the streets?

I confess my inability to see any; it is the grant of the use in each instance. The use is pacific.

The dedication is defined, and no other employment of it can be made. The power of the general assembly in appropriating money or property belonging to the public is subject to no other limitation than is imposed in the constitution. (16 Wal., 678; 21 N. Y., 597; 15 Wend., 374; 11 La. An., 338.)

Depots are necessities for the running and operating of railroads, and for the proper prosecution of the business in the interests of the public they may be regarded as indispe'sible to the accomplishment of the general purposes of the corporation and the design of the legislative grant. (46 N. Y., 546.)

56 The decision in this case depends entirely upon whether or not the act of the general assembly of 1869, in favor of the plaintiff, be constitutional or not.

It cannot be denied that at least there is serious grounds for doubts on the subject; and under the settled jurisprudence of this court and of the S. Court of the United States that is a sufficient reason for not declaring the law void.

I therefore dissent from the opinion and decree of the court.

A true copy.

[SEAL.] (Signed) M. P. JULIAN, *Dy Clk.*

Rule submitted and application refused.

Superior district court for the parish of Orleans.

N. O., MOBILE & TEXAS R. R. CO. *vs.* CITY OF NEW ORLEANS. } No. 26069.

The rule herein taken by the City of New Orleans to dissolve the injunction upon furnishing bond.

Kennard, Howe & Prentiss and A. Micou for defendant in rule; Geo. S. Lacey for plaintiff in rule.

57 When, after hearing pleadings, evidence, and counsel, the court, considering the law and evidence to be in favor of plaintiff in suit and defendant in rule, and against the City of New Orleans—

Ordered the rule to dissolve, upon furnishing bond as required by law be refused.

Answer and reconventional demand.—Filed October 14th, 1874.

Superior district court for the parish of Orleans.

NEW ORLEANS, MOBILE AND TEXAS R. R. CO. *vs.* CITY OF NEW ORLEANS. } No. 26069.

And now before the court comes the City of New Orleans, and for answer to the petition herein filed and served upon her she denies each and every allegation therein contained, except such as may be hereinafter admitted.

And for special answer this appearer further denies the existence of a judgment of the supreme court of the State of Louisiana, having the force and effect set forth and alleged in plaintiff's petition; and

58 avers and declares in and by a decree rendered in a certain suit in said court, and known and designated on the docket thereof as No. 3692, being the same judgment rendered to in plaintiff's petition, the court aforesaid merely recognized and intended to recognize a right of way, on the part of the New Orleans, Mobile and Texas Railroad Co., in and through certain public streets of the city of New Orleans.

Further answering, says that the supreme court of Louisiana, in and by a certain judgment therein rendered in the said suit of the New Orleans, Mobile and Chattanooga Railroad Company vs. City of New Orleans, known on the docket of said court as No. 3701, recognized and decreed the City of New Orleans to be the legal and equitable, the sole and only owner of all the property real and personal, and all the rights, franchises, privileges, and servitudes claimed and demanded by the said city in the suit aforesaid; the said judgment which was founded on the same cause of action, with the same demand,
59 and between the same parties as is set forth in the petition filed in this case, this appearer now pleads against the plaintiffs herein as res adjudicata.

And this appearer further shows unto your honors that the judgment of the supreme court of Louisiana hereinbefore last referred to not only precludes and estops the plaintiff herein from having and maintaining the present action, but that under and by virtue of the same the City of New Orleans is legally and equitably entitled to be put in possession and to have absolute and unrestricted control of all the property, real and personal, and all the rights, franchises, privileges, servitudes, and claim of every nature and description referred to in and embraced by the judgment in the aforesaid suit No. 3701.

Further, this appearer says that if any portion of the real estate referred to in and embraced by the aforesaid decree of the supreme court in favor of this appearer, or referred to in or embraced by the petition herein filed, has been lawfully dedicated to public use, it is the
60 right and duty of this appearer to remove therefrom all impediments and obstacles found in said streets, so as to render the same open and free for use on the part of the public.

Wherefore this appearer prays that upon the original action judgment may be entered in favor of this appearer and against the said plaintiffs; that the injunction herein obtained may be dissolved and held for naught; that this appearer may have and recover in accordance with law fifty thousand dollars for damages by her sustained by reason and on account of the aforesaid writ of injunction, and twenty-five hundred dollars special damages for att'y's fees; and that the said plaintiffs may be furthermore condemned to pay all the costs of this suit.

And reconvening and becoming plaintiff in reconvention, this appearer prays that the New Orleans, Mobile and Texas R. R. Company may be cited to appear and answer this demand in reconvention; that in due course of law the rights, claims, and demand in favor
61 of this appearer, as fixed and decreed by the supreme court of Louisiana in the aforesaid suit No. 3701, may not be recognized by this hon. court, but that such order or orders, writ or writs, process or processes, as shall become necessary be directed to issue, not only for the purpose of placing this appearer in the quiet and peaceable, the sole and absolute possession of all the property, rights, credits, claims, demands, privileges, franchises, and servitudes accorded to her by the supreme court of La. in manner and form and by the judgment aforesaid, but to maintain and keep this appearer in the quiet, uninterrupted,

sole, and absolute possession and enjoyment thereof, free and clear of all hindrance or disturbance on the part of plaintiffs or any party or parties whomsoever.

She further prays that if it should appear upon the trial of this cause that any part or portion of the landed property claimed by this appearer under the judgment aforesaid has been lawfully dedicated as a
62 public street for the uses and convenience of the public, and that obstructions or obstacles have been placed in such public streets by the plaintiffs herein, or any other person or persons whomsoever, that this appearer may be declared to have the right and authority to remove any and all of such obstructions and impediments, and to open the public streets aforesaid for the public use and convenience, and that the said plaintiffs may be perpetually enjoined and restrained from interfering, directly or indirectly, and in any manner whatever, with the free and full use and enjoyment on the part of the public of such public streets or places.

This appearer further prays that plaintiffs may be condemned to pay such damages as are hereinabove prayed for, together with all costs of suit; and that this appearer may have such other and further order, judgment, and relief as may be suited to law and the nature of the case.

(Signed) H. H. WALSH,
Ass't City Att'y.

(Signed) GEORGE S. LACEY,
City Attorney.

63 (Signed) WM. W. KING,
Of Counsel.

Continuance.—Extract from minutes.

TUESDAY, *November 17th*, 1874.

Present, hon'l. Jacob Hawkins, judge.

NEW ORLEANS, MOBILE AND TEXAS R. R. CO.
vs.
CITY OF NEW ORLEANS. } No. 26069.

Ordered by the court to be continued with preference.

Continuance.—Extract from minutes.

TUESDAY, *Dec'r 1st*, 1874.

Present, honorable Jacob Hawkins, judge.

NEW ORLEANS, MOBILE & TEXAS R. R. CO.
vs.
CITY OF NEW ORLEANS.

This case, assigned for this day, was, on motion of counsel, ordered to be continued with preference.

64 *Continuance.—Extract from minutes.*

TUESDAY, *December 15th*, 1874.

Present, hon'ble Jacob Hawkins, judge.

NEW ORLEANS, MOBILE & TEXAS R. R. Co.
vs.
CITY OF NEW ORLEANS. } No. 26069.

This case, assigned for this day, was ordered to be continued with preference.

Continuance.—Extract from minutes.

TUESDAY, *January 12th*, 1875.

Present, Hon. Jacob Hawkins, judge.

NEW ORLEANS, MOBILE & TEXAS R. R. Co.
vs.
CITY OF NEW ORLEANS. } No. 26069.

This case, assigned for this day, was, on motion of counsel, ordered to be continued to the 1st February, 1875.

Continuance.—Extract from minutes.

MONDAY, *February 1st*, 1875.

65 Present, honorable Jacob Hawkins, judge.

NEW ORLEANS, MOBILE & TEXAS R. R. Co.
vs.
CITY OF NEW ORLEANS. } No. 26069.

This case, assigned for this day, was ordered to be continued by preference.

Continuance.—Extract from minutes.

MONDAY, *February 15th*, 1875.

Present, hon'ble Jacob Hawkins, judge.

NEW ORLEANS, MOBILE & TEXAS R. R. Co.
vs.
CITY OF NEW ORLEANS. } No. 26069.

This case, assigned for this day, was ordered to be continued by preference.

Continuance.—Extract from minutes.

MONDAY, *March 1st*, 1875.

Present, hon'ble Jacob Hawkins, judge.

NEW ORLEANS, MOBILE & TEXAS R. R. CO.
vs.
CITY OF NEW ORLEANS.

66 This case, assigned for this day, was ordered to be continued.

Rule to transfer.

Superior district court for the parish of Orleans.

NEW ORLEANS, MOBILE & TEXAS R. R. CO.
vs.
CITY OF NEW ORLEANS. } No. 26069.

The plaintiff presents to the court a petition and a bond for the removal of this cause to the circuit court of the United States, according to the acts of Congress, and asks for the filing of the papers and the making of the order prayed for.

Whereupon the court directs the filing of the papers, and that a notice issue to the defendant's attorneys, returnable on Tuesday next, to show cause, if any, against the order.

Copy of rule to be served on city.

State of Louisiana, superior district court for the parish of Orleans.

FRIDAY, *the 2d day June*, 1876.

Present, the hon'ble B. L. Lynch, judge.

67 N. O., MOBILE AND TEXAS R. R. CO.
vs.
CITY OF NEW ORLEANS. } No. 26069.

The plaintiff presents to the court a petition and a bond for the removal of this cause to the circuit court of the United States, according to the acts of Congress, and asks for the filing of the papers and the making of the order prayed for.

Whereupon the court directs the filing of the papers, and that a notice issue to the defendant's attorney, returnable on Tuesday next, to show cause, if any, against the order.

A true copy. Extract from the minutes.

(Signed) P. E. BURKE, *D'y Clerk.*

Sheriff's return.

Received June 3d, 1876, and on the same day, month, and year I served a copy of the within rule on the City of New Orleans, through B. F. Jonas, attorney for the city of New Orleans, by leaving the same in his office, city hall, in the hands of N. T. N. Robinson, his
68 chief clerk, said Jonas, city attorney, being absent at the time of said service.

Returned same day.

Sh'ff' fee, 50c.

(S'g'd) S. W. SCOTT, *D'y Sh'ff.*

Rule continued.—Extract from minutes.

MONDAY, *June 5th*, 1876.

Present, B. L. Lynch, judge.

NEW ORLEANS, MOBILE & TEXAS R. R. Co. *vs.* CITY OF NEW ORLEANS. } No. 26069.

This case assigned for this day. Ordered to be continued with preference.

Rule absolute.—Extract from minutes.

TUESDAY, *June 6th*, 1876.

Present, Hon. B. L. Lynch, judge.

NEW ORLEANS, MOBILE & TEXAS R. R. Co. *vs.* CITY OF NEW ORLEANS. } No. 26069.

The rule herein taken for the removal of cause to the circuit court of the United States came on this day for trial.

69 Jno. A. Campbell, for plaintiff in rule, defendant being absent and not represented.

When, after hearing the pleadings and counsel, the court considering the law to be in favor of plaintiff in rule—

It is ordered that said rule be made absolute, and accordingly that this cause be removed to the circuit court of the United States.

Petition for removal.

Superior district court for the parish of Orleans.

NEW ORLEANS, MOBILE & TEXAS R. R. Co. *vs.* CITY OF NEW ORLEANS. } No. 26069.

To the honorable the judge of the said superior district court, parish aforesaid:

The petition of the plaintiff in this cause, pending in said court for the parish aforesaid, of the title above set forth, respectfully shows to you, your honor, that the said plaintiff is a corporation of the

70 State of Alabama which is authorized to hold property and maintain a railroad extending from the city of Mobile into the city of New Orleans, and whose legal condition of citizenship is the State of Alabama aforesaid, and that the defendant is a corporation of the State of Louisiana, and is domiciled in this State.

Your petitioner further shows that there is involved in this suit a greater sum than one thousand dollars and the costs.

Your petitioner further shows that it has reason to believe, and does believe, that from prejudice and local prejudice and influence the corporation will not be able to obtain justice in the court aforesaid.

The corporation prays of the court an order for the removal of the cause to the circuit court of the United States, according to the provisions of the acts of Congress in that behalf made, and for that purpose

your petitioner tenders the bond, with security, conditioned according to law, herewith.

(Signed) JOHN A. CAMPBELL,
Att'y for the Plaintiff.

71 PARISH OF ORLEANS:

Before me, a justice of the peace, personally came James A. Raynor, who maketh oath and saith that he is one of the trustees in possession of the railroad and property of said New Orleans, Mobile and Texas Railroad Company embraced in this suit, and a receiver, acting under the orders of the United States circuit court of the district of Louisiana, and empowered to defend or prosecute suits relative thereto and on behalf of said corporation and as an agent aforesaid; that the averments in the petition are true in substance and matter of fact.

(Signed) JAMES A. RAYNOR.

Sworn to and subscribed before me this 1st day of June, 1876.

[SEAL.] (Signed) JOHN LE MONNIER,
3rd Justice of the Peace, Parish of Orleans.

Bond.

Know all men that we, the New Orleans, Mobile and Texas Railroad Company, and D. B. Robinson, as its surety, are held and firmly
72 bound unto the City of New Orleans in the sum of five hundred dollars, to be paid to the said City of New Orleans and its successors, for which payment well and truly to be made we bind ourselves, jointly and severally, our heirs and successors, by these presents. Sealed with our seals and dated this 2d day of June, 1876. The condition of this obligation is such that whereas the said New Orleans, Mobile and Texas Railroad Company has applied to the said court for an order to remove a cause pending in the superior district court of the said parish in which the said corporation is plaintiff and the City of New Orleans is defendant, and has obtained the same to remove the said cause to the circuit court of the United States for matter shown in the petition and order:

Now if the said corporation, on or before the first day of the session of the said court, at the next term thereof, shall enter copies of the process, pleadings, depositions, testimony, and all the proceed-
73 ings in the cause of whatever kind, and entering bond in said court if required, and shall pay all costs that shall be awarded by the said circuit court of the United States if such court should hold that the said suit was improperly or wrongfully removed thereto, then this obligation shall be null and void; otherwise to have full force and effect.

NEW ORLEANS, MOBILE AND TEXAS RAILROAD COMPANY,
Per J. A. CAMPBELL, *Att'y.* [SEAL.]
D. B. ROBINSON, *As Surety.* [SEAL.]

Order.

Superior district court, parish of Orleans.

Petition having been made and bond given conformably to the acts of Congress, let the transfer and removal be made according to the petition.

New Orleans, June 15th, 1876.

(Signed) B. L. LYNCH, *Judge.*

74 *Clerk's certificate.*

I, John Burke, clerk of the superior district court for the parish of Orleans, do hereby certify that the foregoing pages do contain a true and correct copy of all the proceedings had, documents filed, and testimony and evidence adduced and filed, except the maps "A & B" offered in evidence, which have been mislaid or lost, in the suit wherein the New Orleans, Mobile and Texas Railroad Company is plaintiff, and the City of New Orleans is defendant, known on the docket as No. 26069.

In testimony whereof I have hereunto signed my name and affixed the seal of our said court, at the city of New Orleans, on this 31st day of July, in the year of our Lord eighteen hundred and seventy-six, and the 101st year of the Independence of the United States of America.

[SEAL.] (Signed) JOHN BURKE, *Clerk.*

75 *Certificate of judge.*

I, B. L. Lynch, sole judge of the superior district court for the parish of Orleans, do hereby certify that John Burke is the clerk of said court; that the same is a court of record having common law jurisdiction, and that the signature of said Burke to the foregoing certificate is in the proper handwriting of him the said clerk; to his official acts as such full faith and credit are due and owing; and I do further certify that this attestation is in due form of law.

Given under my hand, at the city of New Orleans, on this 3d day of July, A. D. 1876.

(Signed) B. L. LYNCH, *Judge.*

Clerk's certificate to judges.

I, John Burke, clerk of the superior district court for the parish of Orleans, do hereby certify that the hon'ble B. L. Lynch is the judge of said court, and that the signature to the foregoing certificate is
76 in the proper handwriting of said judge, and I do further certify that this is a court of record having common-law jurisdiction.

In testimony whereof I have hereunto signed my name and affixed the seal of our said court, this 31st day of July, A. D. 1876, and the 101st year of the Independence of the United States of America.

[SEAL.] (Signed) JOHN BURKE, *Clerk.*

It is hereby agreed that this transcript shall be filed in the U. S. circuit court in its present condition without objection, and that the two maps, A & B certified to be lost in the clerk's certificate, p. 82 herein, may be produced, in copy or original, by either of the parties to this suit at any time preceeding the trial.

(Signed) B. F. JONAS,
City Attorney.

(Signed) JNO. A. CAMPBELL,
Att'y for Pl'ff,
P'r A. MICOU.

N. O., *Nov'r 1st*, 1876.

77 The pl'ffs come and reply to the answer that it is not true, and that it furnishes no reason why the relief should not be granted, and that the plaintiffs should have all the relief prayed for; wherefore they pray judgment as heretofore prayed.

(Signed) J. A. CAMPBELL.

Proceedings in the circuit court of the United States for the fifth circuit and district of Louisiana.

Order cause placed on the chancery docket.—Extract from minutes April term, 1877.

NEW ORLEANS, *Saturday, June 16th*, 1877.

Court met pursuant to adjournment. Present, Hon. E. C. Billings, district judge.

NEW ORLEANS, MOBILE & TEXAS R. R. CO. *vs.* CITY OF NEW ORLEANS. } No. 7972.

Upon calling up the rule to docket this cause on either the equity or law docket, the attorney for the plaintiffs elected the chancery docket.

78 Whereupon it was ordered that said cause be placed on the chancery docket, and all the orders for injunction heretofore made are continued in force until further orders.

Order to consolidate case.—Extract from minutes of June 23d, 1877.

7971. E. D. Morgan & al., trustees, vs. City of New Orleans.

7972. N. O., Mobile & Texas R. R. Co. vs. Same.

8241. City of New Orleans vs. Morgan & Raynor, trustees.

These several causes being of the same subject-matter, and parties to the same suit being the same or being in privity with one another, on motion the court orders that they be consolidated.

The court orders that the plaintiffs claiming adversely to the city file an amended bill or petition, and that the causes be placed on the chancery docket, and that the injunctions granted in the State court in favor of several parties, whether plaintiffs or defendants, be continued in force.

79 *Motion and order rule for injunction fixed.—Extract from minutes of Jan'y 25th*, 1878.

NEW ORLEANS, MOBILE AND TEXAS R. R. Co. *vs.* CITY OF NEW ORLEANS. } No. 7972 & 7971.

CITY OF NEW ORLEANS *vs.* NEW ORLEANS, MOBILE & TEXAS R. R. Co. } No. 8241.

By consent of counsel the rules for injunction in above cases are assigned for hearing on Saturday, 2 February, 1878, at 11 a. m.

Agreement and replication.—Filed February 9th, 1878.

In the circuit court of the United States, district of Louisiana.

NEW ORLEANS, MOBILE & TEXAS RAILroad Company
vs.
CITY OF NEW ORLEANS. } No. 7972.

The parties in this cause agree that this suit shall be heard as
80, 81 a chancery cause, and that the pleadings shall be the petition, answer, and a general replication.

The parties agree that the city corporation, at the date of the petition for injunction, without demand on the company, were in the act of prostrating the walls tanks within the streets, as stated in the petition and the affidavits filed, and that no other proof shall be required of the nature and extent of the proposed damages, and that the issue to be tried shall be in respect to the rights of parties and consequent damages.

(Signed) JOHN A. CAMPBELL,
Sol. for Pl'ffs.

(Signed) W. W. KING,
Att'y for Def'd't.

Circuit court of the United States, district of Louisiana.

NEW ORLEANS, MOBILE & TEXAS RAILroad Co.
vs.
CITY OF NEW ORLEANS.

The plaintiff, the New Orleans, Mobile and Texas Railroad Company, comes and for replication to the answer of defendants says the
82 petition is true in all of its facts, and that the petitioner is entitled to the relief prayed for, and that the answer is not true and is insufficient, and does not bar the claim of the plaintiffs; and this the plaintiff is ready to verify.

Wherefore the plaintiffs pray for judgment as he has prayed in the petition.

(Signed) J. A. CAMPBELL,
For Plaintiffs.

83 TESTIMONY FOR PLAINTIFF.—FILED MARCH 11TH, 1878.

Circuit court of the United States, district of Louisiana.

NEW ORLEANS, MOBILE AND TEXAS RAILROAD Company
vs.
CITY OF NEW ORLEANS. } No. 7972.

Testimony taken on behalf of the plaintiff (pursuant to the adjournment of 21st of February, 1878) before F. A. Woolfley, one of the commissioners of said court.

NEW ORLEANS, *February 28th*, 1878.

Present, J. A. Campbell, esq., for plaintiff; W. W. King, esq., for defendant.

ROBERT W. ROGERS, a witness produced, sworn, and examined on behalf of complainant, says:

By Mr. CAMPBELL:

Q. Were you in the employ of the New Orleans, Mobile and Chattanooga Railroad Co. in the years 1868, 1869, and 1870?

A. I was.

Q. What employment did you have?

A. Civil engineer.

Q. Had you any intercourse with the property in possession of the company between Calliope street and Water street and the Mississippi River?

84 A. Yes, sir.

Q. Are you familiar with the condition of that property during these years?

A. Yes, sir.

Q. What was the condition of the property between Calliope street, Water street, and the river?

A. It was all an open space, unoccupied.

Q. Were there any streets laid out—I mean by laid out, staked out and filled up, so that you could see there was a street?

A. No, sir.

Q. Between Water street, Girod street, and the river?

A. No, sir.

Q. What was the condition of the ground between Calliope street, Girod street, and Water street?

A. At the intersection of St. Joseph and Water streets there was a large pond, and there was another large pond between St. Joseph and Julia, and also at the foot of Calliope street, or near the foot of it, and the ground was generally low around in that locality.

Q. Did you have to do a great deal of filling up to make it passable in order that it might be occupied?

A. Yes, sir; I did.

Q. Can you give us any information as to what you did?

85 A. It took about twenty-five thousand yards of earth, according to the measurement I made at that time, to fill that hole up at the intersection of St. Joseph and Water streets, and we filled the greater portion of it at that time. I don't think St. Joseph street extended at all beyond the line of Front street. Front street is the next street to Water street, and the other streets, Julia and Notre Dame, ran down as far as the line of Water street, but no further. St. Joseph street at that point was in an impassable condition. There was a bridge across there at that time for foot-passengers to go across, and that was the only way to get by. Besides these twenty-five thousand yards of earth that I speak of, we filled up another hole near the foot of Calliope street which probably took two or three thousand yards more. This filling that I speak of was simply filling it up to the point where we could use it at that time. Since that time we have put in considerable more filling during the years following, and for the last three years we have been putting in filling.

Q. Do you know whether the taxes have been paid?

86 A. Yes, sir; the taxes have been paid up to the present time, with the exception of the assessment made this year on the capital of the company. It amounted to about $9,000, according to my recollection. That I do not think was paid. It was not assessed on the property itself, but it was on the capital. All the property taxes have been paid. I suppose they amount to between $4,000 and $5,000 a year.

Cross-ex. by Mr. KING:

Q. Does not that railroad own a number of squares of ground in that vicinity, between Water street and the river?

A. Yes, sir.

Q. You speak of the taxes being paid; was it or not taxes paid upon the ground that the railroad had purchased and owned?

A. I cannot answer that question, for I don't know whether we have paid on the property the use of which was granted by the State or not. I think we have paid some taxes. I do not know that we could tell from what records we have got down there now, but my impression is that we paid taxes on the land that did not belong to the company.

Q. You are not certain on that point?

A. I am not certain. I do not know whether we could tell from the data we have, but we could tell by looking it up.

87 Q. Did you pay taxes on the streets or lines of streets that you occupy in putting improvements there?

A. I should presume not, but I am not certain.

E. E. GODDEN, a witness produced, sworn, and examined on behalf of complainant, deposes and says:

By Mr. CAMPBELL:

Q. Have you been in the employ of the New Orleans, Mobile & Chattanooga Railroad Co.?

A. Yes, sir.

Q. At what time?

A. I think I commenced work on the 17th April, 1870.

Q. Where were you employed at?

A. At the yard then as locomotive engineer on the construction train.

Q. Are you acquainted with the condition of the ground in that neighborhood which was in the possession of the New Orleans, Mobile and Chattanooga Railroad Co.?

A. Yes, sir.

Q. What was its topographical condition at that time?

A. It was very low.

Q. Were any streets open between Water street and the river at that time?

A. Between what other streets?

88 Q. Between Water street and the river and Calliope street and Girod.

A. I think that possibly a dray might go down Julia street, but it was very bad going down there—not at all seasons; but at St. Joseph street none. I don't think there was any regular outlet nearer than Girod street towards Canal from Calliope street.

Q. Who was it opened or filled up these streets, or the ground on which the streets would go if they were marked out in that locality?

A. The railroad company.

Q. Were there any streets parellel to Water street, and between Water street and the river, opened at that time and filled up?

A. No, sir.

Q. What was the condition of Water street at that time?

A. Between Julia and Calliope it was a mud-hole all the way, and the biggest part of the way it was a deep pond; there was a plank walk across it, but for some time it was dangerous, and the people would not go across, the stancheon supporting the plank walk had given way and

fell into the water, and it was dangerous to pass. We used to have to go round Calliope street to get to the train when it stood at the foot of St. Joseph street.

89 Q. It was an unreclaimed swamp between these boundaries?
A. Yes, sir.

Cross-examined by Mr. KING:

Q. Were there any buildings or permanent constructions on the line of these streets that have since been closed about Girod street?

A. Not between Water street and the river.

Q. Has or has not the railroad co. put permanent buildings across the extension of Girod st., Joseph, North & South Market, & Delord streets?

A. I think not across Girod street. Girod & Julia are both open, St. Joseph is closed, and Notre Dame closed, but North & South Market I never saw them open.

By Mr. CAMPBELL, for complainant:

Q. You say St. Joseph street & Notre Dame are closed, & Water street, Julia, & Girod streets are open?

A. Yes, sir; St. Joseph street never was open; it was always impassible.

Plaintiff closes his testimony.

DISTRICT OF LOUISIANA, *ss:*

I, F. A. Woolfley, commissioner of the circuit court of the United States for the district of La., do hereby certify that on the day named in the depositions hereto annexed I was attended at the office of the clerk of said circuit court by the counsel and witnesses aforesaid; that the said witnesses were by me duly sworn, and examined by counsel, and their depositions reduced to writing by Henry Langford, phonographer, who was duly sworn to perform his duty faithfully; and the signatures of the said witnesses to their depositions were waived by consent of counsel.

New Orleans, February 28th, 1878.

(Signed) F. A. WOOLFLEY,
Comm'r U. S. Cir., District of Louisiana.

DISTRICT OF LOUISIANA, *ss:*

I, Henry Langford, do most solemnly swear that I will faithfully perform my duty as phonograper in the case of the New Orleans,
90 Mobile and Texas Railroad Company vs. The City of New Orleans, in the circuit court for the district of Louisiana: so help me God.

(Signed) HENRY LANGFORD.

Subscribed and sworn before me, February 28, 1878.

(Signed) F. A. WOOLFLEY,
Comm'r U. S. Circuit Court, District of La.

TESTIMONY FOR DEFENDANT.—FILED MARCH 11TH, 1878.

Circuit court of the United States, district of Louisiana.

NEW ORLEANS, MOBILE & TEXAS R. R. Co. *vs.* CITY OF NEW ORLEANS. } No. 7972.

Testimony taken on behalf of the defendant (pursuant to the notice hereto annexed) before F. A. Woolfley, one of the commissioners of said court.

NEW ORLEANS, *February 9th*, 1878.

Present, W. W. King, esq., for defendant; J. A. Campbell, esq., for plaintiff.

Mr. LOUIS H. PILIE sworn and examined for defendant.

Direct examination by Mr. KING:

Q. Mr. Pilie, what is your business?

A. Civil engineer, sir.

91 Q. Are you in the office of the surveyor of the city of New Orleans?

A. Yes, sir; the deputy city surveyor.

Q. Look at this map, Mr. Pelie, and tell us whether you made that map, and whether it is correct.

A. No, sir; I didn't make that map.

Q. It is certified to by Mr. Demecourt?

A. Yes, sir.

Q. Is it correct?

A. Yes, sir.

Q. Made in that office?

A. Yes, sir.

Q. When was it made?

(Objected to by Judge Campbell.)

A. Lately, sir.

Q. Is that taken from some old map that was made previously?

A. Yes, sir; it was written from some old map. There was a map of that in a suit also of Handlin, at the time you were acting judge (referring to Judge Campbell), against the Jackson Railroad, showing all the track. That map was made by me.

Q. Where is that map?

A. Filed in some court.

Mr. W. J. HODGSON sworn and examined for *for* defendant.

Direct examination by Mr. KING:

Q. What is your business, sir?

92 A. I am an auctioneer, sir.

Q. What line of business is your principal one?

A. Principally real estate, sir.

Q. You have been engaged in that business for some years?

A. About eighteen or nineteen years, sir.

Q. You have had experience as to the value of property in New Orleans?

A. Well, yes, sir; pretty fair.

Q. Mr. Hodgson, I would like for you to give us your opinion as to

what would be the effect upon the property on these streets running towards the river, and also on the others, of blocking up those streets running to the river. How would it effect the property in the vicinity?

A. Well, sir, I think it would effect it very seriously, cut off the main artery of commerce from the two extremities. The levee, for instance, and the business portion in the rear.

Q. Can you make an estimate in your own mind as to the probable percentage of injury?

A. I could not, sir; It would be very hard for a person to do that.

Mr. JOHN A. WATKINS sworn and examined for defendant.

Direct examination by Mr. KING:

Q. Mr. Watkins, what is your business?

93 A. Well, I am not engaged in any business at all, sir.

Q. How long have you lived in New Orleans?

A. Well, off and on, for half a century; fifty-two years, I believe.

Q. Were you not at some time engaged as a real-estate broker?

A. Yes, sir; for a number of years.

Q. And for some time assessor of taxes of the city?

A. Yes, sir; for eleven years.

Q. Mr. Watkins, I will ask you the same question that I asked Mr. Hodgson: What, in your opinion, would be the effect on the property situated on the streets in the vicinity of the river, the streets running to the river, the effect of closing up those streets?

A. Well, I will answer as Mr. Hodgson has—a very serious injury.

Q. Do you know anything about Saint Mary's Market?

A. I only know its location, sir; it has been used as a public market for a number of years.

Q. What would be the probable effect on that market of cutting of' access to it from the river side?

A. Well, I suppose it would have pretty much the same influence upon that as upon property; an open communication is always desirable.

94 Mr. PELIE recalled.

Examination continued by Mr. KING:

Q. I understood you to say that this map you know to be correct?

A. Yes, sir.

Q. Are the obstructions that exist placed on this map properly?

A. Yes, sir; they are.

Q. It represents the obstructions?

A. Yes, sir.

Q. Please describe how you designate them.

A. The streets?

Q. The obstructions that you have got down here. (Witness shown map.)

A. There is a fence.

Q. The yellow lines?

A. The yellow lines are the obstructions.

Q. Made by the New Orleans and Mobile Railroad?

A. Yes, sir.

Q. What are these dark colors?

A. Are the buildings, warehouses, and the depot of the New Orleans and Mobile Railroad; there are two warehouses and a depot; there are buildings in here which are not marked.

Q. Then the fence encloses them?
A. Yes, sir; the fence encloses all that are not marked on the map.
Q. Mr. Pelie, look at this map marked No. 2; examine that map if you please.
A. It is a map made by Mr. Demicourt, also lately made.
95 Q. Is it correct?
A. Yes, sir.
Q. Mr. Pelie, you have resided in New Orleans a long time?
A. Yes, sir; 59 years.
Q. What, in your opinion, is the effect upon property in the vicinity of the streets running to the river by blocking off the streets from the river?
A. It would depreciate their value, sir.
Q. About this Saint Mary's Market; you have been connected with the city government, have you not, for a long time?
A. Yes, sir. I have been city surveyor from 1852 up to 1862, and from 1866 to the latter end of 1867.
Q. You are acquainted with the Saint Mary's Market?
A. Yes, sir.
Q. What effect would blocking up the streets leading from that market to the river have upon that property?
A. Well, the same answer I have given for other public property, that it depreciated its value.
Q. Have you any idea of what the present revenue to the city from the Saint Mary's Market is, as compared with previous years?
A. No, sir; I cannot investigate that point.

Cross-examined by Judge CAMPBELL:

96 Q. You recollect at what time those buildings that you have described on that map, those tracks, etc., were laid down by the railroad?
A. Well, I do not recollect exactly.
Q. Is it as early as 1870?
A. Yes, sir; about 1870.
Q. What do you call this as a depot; freight depot?
A. It is a freight depot, sir.
Q. What is that one? (Referring to the map.)
A. Those are the work-shops.
Q. When they are marked depots they mean freight depots, and when they are marked warehouses they mean warehouses?
A. Yes, sir.
Q. All connected with the railroad?
A. Yes, sir; all connected with the New Orleans and Mobile Railroad.

ROBERT E. DIAMOND sworn and examined for defendant.

Direct examination by Mr. KING:

Q. You reside in New Orleans, Mr. Diamond?
A. I do, sir.
Q. How long have you resided here?
A. Born and raised here.
Q. What is your business now?
A. At the present time I am administrator of the police of the city of New Orleans.

97 Q. Have you resided long in the vicinity of the Saint Mary's Market?

A. Born and raised there, sir.

Q. Mr. Diamond, you are yourself interested in the property in that vicinity?

A. Not at the present time, sir.

Q. I would ask you what, in your opinion, is the effect upon that market from blocking up the streets leading from it to the river—on the value of the property?

A. Mr. Cripple it is a matter of record. He has paid as high as thirty-six thousand dollars ($36,000.00) a year for that market.

Q. For what does it rent now?

A. I think it rents now—the last sale of the markets in the council chamber was $525.00 or $550.00 a month. They are selling them now by the month. Mr. Cripple informed me that he had paid as high as $36,000.00 a year. The way they are selling it now is by the month.

Q. Five hundred and fifty dollars ($550.00) a month?

A. Somewhere about that, sir.

Q. Well, the property in the vicinity of that market, how is that effected by the blocking up of these streets?

A. In 1867, when I was interested there, I was offered by this man Hatton—he offered me sixty-seven thousand dollars for my prop-

98 erty; at the time that it was sold it sold for ten thousand ($10,000.00).

Q. It was sold, then, since those streets were blocked out?

A. Yes, sir; it was sold in 1874 or 1873—1874.

Q. Wasn't that at one time a large market?

A. Yes, sir. It was a notorious fact it was as crowded through the 'isles of the market as we have pointed to with pride in the French market. It was very much crowded.

Q. Take the property on Notre Dame street; what has been the effect on that property of its being blocked off from the river?

A. Notre Dame street? Well, that property also has depreciated. One side is considered old warehouses and the other side is used principally as boarding-houses, and one thing and another like that. The property has depreciated; everything gone to rack and ruin.

Q. Now, you have been on that street lately?

A. Notre Dame? No, sir; I have not.

Q. Has the property on Tchoupitoulas street not depreciated, too?

A. Well, I have had a conversation with Mr. Cripple there. He is about the principal owner there, and I know of places there where he is renting.

99 By Mr. CAMPBELL. Never mind about Mr. Crippel.

By Mr. KING:

Q. Well, of your own opinion?

A. Well one piece of property that I did own there, at the corner of Taylor and Tchoupitoulas, that Mr. Thomas Pickles offered me eight thousand dollars ($8,000.00) for. It was sold also in 1874 for twenty-five hundred dollars ($2,500.00).

Q. Is not property all along that region of the city very much depreciated?

A. It is, yes, sir; in fact we lost a very enterprising merchant there lately, one Simond Bone. He ceased living there, for he could not make a living. He went up to the Magazine Market, on the corner of Maga-

zine and Saint Mary, right opposite the Magazine Market, and keeping the same kind of business too.

Cross-examination by Judge CAMPBELL:

Q. Is not all the property in town depreciated?

A. That I don't know, sir.

Q. Is not a large quantity of it depreciated in value?

A. I am not aware of it. I don't know anything about that, I never made any inquiries.

Q. Is there not over fifty (50) acres of property between the
100 river and Camp street and Canal street that don't pay the taxes?

A. I don't know that to my knowledge.

Q. Where do you live now?

A. Now? Opposite Saint Mary's Market, sir.

Q. When was the Saint Mary's Market rented for thirty-six thousand dollars ($36,000.00)?

A. I told you that Creppel had paid that for it, sir.

Q. I asked you when?

A. It is near somewhere about 1860—1858—1859; somewhere about that.

Q. That is before the war?

A. Yes, sir, before the war.

Q. How much did it rent for after 1865?

A. I don't know, sir.

Q. How much in 1866 did it rent for?

A. I don't know that either.

Q. How much did it rent for in 1867?

A. I don't know that either.

Q. How much did it rent for in 1868?

A. I don't know that either.

Q. How much did it rent for in 1869 or 1870?

A. I don't know that either.

Q. How much did the Poydras Market rent for in 1860?

A. I don't know, sir.

Q. How much did it rent for in 1865?

A. I don't know that.

Q. How much did it rent for in 1860?

A. I don't know that, sir.

101 (Mr. King asked witness to get one of his clerks to make out a statement of how much it was rented for.)

The further taking of testimony was, by consent of counsel, adjourned to Wednesday, February 13, 1878, at 11 o'clock a. m.

NEW ORLEANS, *February 13th*, 1878.

Testimony on behalf of the defendant resumed, pursuant to adjournment.

Present, W. W. King, esq., for defendant. Absent, J. A. Campbell, esq., for plaintiff.

Mr. KING proceeded with the examination of the witnesses, reserving to plaintiff's attorney the right to recall them for cross-examination.

Mr. King offers in evidence documents marked "A 1" & "A 2," being acts of compromise between Livingston and the heirs of Gravier, one before Hugh Lavergne, September 20th, 1820, and one before H. B. Cenas, June 30th, 1851.

Mr. D. RAMELLI, sworn and examined for defendant:

Q. You are a resident of this city?

A. Yes, sir.

Q. How long have you been a resident?

A. Since 1856.

Q. Are you familiar with the property in the batture in front
102 of the city from Canal street up to Calliope?

A. Yes, sir; not particularly from Canal, but from Julia up I am more familiar.

Q. Here is a map showing the obstructions that have been placed by the railroad in blocking out the streets; Delord is partially blocked up in front of North and South Market, Notre Dame, and probably Girod streets; what do you think is the effect upon property in the vicinity of the streets running to the river, and contiguous property on other streets, by the blocking up those streets from the river?

A. Well, the blocking up of those streets caused a great destruction in the value of property and business. Previous to the blocking of those streets I was always making a very nice living, making money from the trade I got direct from the levee, besides other trade; from that time to the present I have been losing money, and that compelled me to move my business away from there, and I had to buy business elsewhere so I could live. There was no way of making a living there.

Q. Do you own property yourself there?

A. I do, sir.

Q. Where is property located?

A. This property I mentioned is at 59 North Market, and my
103 individual property is No. 66 St. Joseph; I was the owner of No. 61 North Market, property that cost in 1858, $7,000 to build, not counting the ground. Three years ago I bought it for $1,825, and the best rent I could get for it was $15 a month, and that compelled me to sell it. I sold it for $1,590. The property on 59 North Market and 66 St. Joseph I bought three years ago.

Q. How do you know what this other property cost to build?

A. The builder told me so.

Q. Has the owner ever told you anything about it?

A. The owner has been dead some years. I bought the property in a succession sale.

Q. How about the other properties; what was their value in 1868 & 1869?

A. If I were to close them up I could not rent them at all.

Q. You occupied a portion of them, did you not?

A. I occupied 59 North Market and 66 St. Joseph.

Q. Are those properties now rented?

A. I occupy them still, because I cannot rent them.

Q. Have you tried to rent them?

A. I have not.

Q. Has anybody offered you anything for them?

A. No, sir.

104 Q. Would you rent them if you could get a fair rent for them?

A. Yes, sir; I would sell them if I could get a fair sale.

Q. How much has the property been injure' by the blocking up of those streets?

A. There is a certain depreciation, and the times are rather bad. I don't think the depreciation of some of the property is less than fifty or seventy-five per cent.

Q. St. Joseph is a large, fine street?

A. Yes, sir.

Q. Is it not pretty well improved, say from Magazine to the river?

A. It used to be.

Q. I mean all built up?

A. Well, all the buildings on there are very good, but then they cannot rent them through the railroad running along there; people don't like to be annoyed by it.

Q. St. Joseph street is blocked up by the New Orleans, Mobile and Texas Railroad?

A. Yes, sir.

Q. Has that had the effect of depreciating property on that street?

A. Yes, sir.

Q. What is your estimate of the depreciation of the property by the blocking up by the N. O., Mobile & Texas Railroad?

105 A. I have already stated that in my previous answers.

Q. What effect has the closing of North & South Market street had upon St. Mary's Market? Is it patronized as formerly?

A. No, sir; there are no facilities for the people on account of the communication being cut off.

Q. You have been on Notre Dame street, between Magazine and the river?

A. Yes, sir; I have been there.

Q. All the way from Magazine street to the river has not the property generally been improved?

A. Yes, sir.

Q. What kind of buildings are on that street?

A. There are different classes of buildings.

Q. Are they not generally brick buildings all the way from Magazine?

A. Mainly.

Q. Are they not generally three-story buildings?

A. Three and two-story buildings.

Q. Have you been on that street in the last year or two?

A. Not in that locality that I am aware of.

WM. CREPPEL sworn and examined for defendant:

Q. Are you a citizen of New Orleans?

A. Yes, sir.

106 Q. How long have you been?

A. Forty-six years.

Q. Are you familiar with the portion of the city from Canal street up to Calliope, and from Magazine to the river?

A. I am, sir. I know more about around St. Mary's Market than around the other streets.

Q. What has been the effect upon property, in your opinion, in the districts mentioned by the blocking up of the streets by the New Orleans, Mobile & Texas Railroad Company running towards the river?

A. I think it has depreciated the value of property about three-fourths.

Q. Has the effect of that depreciation extended as far back as Tchoupitoulas street?

A. Yes, sir.

Q. When you speak of a depreciation of three-fourths, is that what you estimate as being caused by the blocking out of these streets by the railroad, independent of any other cause?

A. Not exactly. Business has gone down and we cannot rent any more.

Q. I want you to state what is the general depreciation from the times and what the depreciation is from the blocking up of the streets by the N. O., Mobile & Texas Railroad Company?

A. I think about fifty per cent.

107 Q. Twenty-five per cent. would have covered the depreciation if those streets had not been blocked?

A. Yes, sir.

Q. Are there any facts within your knowledge to show that depreciation had taken place?

A. Before the streets were closed up I had property rented there that I used to collect $550 a month for, & now I get but $80.

Q. What rent did you get for that property in 1869?

A. I got about $550 for both properties on both sides—$550 a month.

Q. Do you recollect the year the railroad stopped up the streets?

A. I have no recollection exactly. I think it has been about seven years.

Q. Where is your property situated?

A. On North Market, Tchoupitoulas, and South Market; both corne's.

Q. Do you know how many squares there are on Notre Dame street, betweeen Magazine and the river?

A. Four or five squares, I think. The names of the streets I don't know.

Q. Do you know of your own knowledge what the depreciation is of other property around the St. Mary's market by the blocking up of the streets?

A. About fifty per cent.

Q. Were you ever lessee of the market?

108 A. Yes, sir.

Q. When?

A. I don't recollect exactly. Some twenty-odd years ago.

Q. Before the war?

A. Yes, sir; and I had it during the war. Before the war I had it several times.

Q. Do you recollect what you gave?

A. I paid once thirty-two thousand dollars. There was a little market at the corner of the triangle of Annunciation and Tchoupitoulas streets that belonged to me, that I paid thirty-three thousand dollars for. It was burned down.

Q. When was that triangle burned down?

A. It was some time ago, before the war.

Q. What did you give for the market in 1860?

A. That was during the war, and I only had it for seven months. The city was captured in 1872; and I only had it for seven months when I took it out of the city's hands; they let me have it very cheap then. I was offered for one property thirty thousand dollars before the streets were closed up which I don't believe I could get seven thousand dollars for now.

JAMES CULLAN sworn, and examined for defendant by Mr. KING:

Q. You reside in the city of New Orleans?

A. Yes, sir.

109 Q. How long have you resided here?

A. Since 1852.

Q. Are you familiar with the property lying between Magazine st. and the river, and from Calliope st. down to Canal st.?

A. Yes, sir.

Q. What effect, in your opinion, has the closing up of the streets running to the river had upon the property in that district we have mentioned?

A. I think it has depreciated about fifty per cent.; take off fifty per cent. anyhow. I don't think it is worth anything.

Q. Have you property yourself in that district?

A. Yes, sir.

Q. Where is it?

A. No. 53, North Market, & goes out to St. Joseph. I don't know the number on St. Joseph street.

Q. How long have you owned that property?

A. I guess about seven or eight years. I am not sure, but it is about seven or eight years.

Q. Did you own it before St. Joseph and North Market streets were blocked up?

A. No, sir.

Q. You didn't own it before then?

A. No, sir.

Q. What did the property cost you?

110 A. When I bought the property it cost me five thousand two hundred and fifty dollars, and I put improvements on it that will make it come to ten thousand dollars.

Q. The whole property?

A. Yes, sir; it cost me that anyhow.

Q. You say those streets were blocked up when you bought the property?

A. No, sir.

Q. Have you tried to sell it?

A. No, sir.

Q. Why don't you sell it?

A. I don't think I could get anything for it.

Q. What price do you suppose that property would bring, if you were compelled to sell it?

A. I don't think it would bring over three thousand dollars, if it was put to the hammer to-morrow, and it cost me ten thousand dollars.

Q. Has the value of all other property been reduced at the same rate in that vicinity?

A. Yes, sir.

JEAN DUBARRÉ sworn, and examined for defendant by Mr. KING:

Q. You are a resident of New Orleans?

A. Yes, sir.

Q. How long have you lived here?

111 A. Since 1851.

Q. Are you familiar with the portion of the city lying between Magazine street and the river, and between Calliope st. and Canal?

A. Yes, sir.

Q. What effect do you think the blocking of the streets running towards the river has had upon the value of property where the streets have been blocked?

A. About fifty per cent.

Q. Do you think the value has been depreciated fifty per cent. independent of the ordinary depreciation of property in the city from the times?

A. No, sir.

Q. What do you estimate, then, the property has depreciated in consequence of the general hard times; what is that independent of the blocking of the streets?

A. About twenty per cent.

Q. What damage was caused by the blocking of the streets? What is your estimate of the damage caused by the blocking of the streets?

A. Fifty per cent.

Q. That is independent of general depreciation of property?

A. Yes, sir.

112 Q. Do you own property anywhere in that region on North Market and on St. Joseph?

A. Yes, sir.

Q. Does your property run through?

A. Yes, sir.

Q. Do you occupy that property now?

A. It is rented.

Q. How much is it rented for?

A. It is rented for a hundred dollars a month.

Q. What did it rent for formerly?

A. It used to rent for two hundred and fifty dollars a month.

Q. Did you own that property in 1869?

A. Yes, sir.

Q. What was the rent you got for it then?

A. About $250.00.

Q. What did the property cost you originally, the improvements and all?

A. About twenty-six thousand dollars.

Q. You are familiar with the property in that vicinity?

A. Yes, sir.

Q. Are you able to tell whether other property has depreciated as much as yours?

A. About the same thing, about fifty per cent.

Q. Do you know how many squares there are from Magazine on Notre Dame to the river?

113 A. I think there is four or five. (Referring to the map witness states:) There are Tchoupitoulas, Foulton & Front streets, then Water and Pelia streets.

Q. Does not the closing of those streets affect the property for some considerable distance from the river? Does it not probably affect it all the way back for a good long distance?

A. Yes, sir.

Q. On Notre Dame street, do you not think that that property is affected more or less all the way from Magazine to Front?

A. Yes, sir.

W. W. HANDLIN sworn, and examined for defendant by Mr. KING:

Q. You are a resident of New Orleans?

A. Yes, sir.

Q. How long have you been?

A. Twenty years.

Q. Are you familiar with the district of the city from Calliope street down to and below Notre Dame street, between Magazine and the river?

A. Very familiar.

Q. We have here a map, sworn to be correct, showing the obstructions put upon those streets. What effect, in your opinion, has

114 the closing of the streets that have been closed by the N. O., Mobile and Texas Railroad Company had upon the value of property in that vicinity? Has it depreciated it?

A. I consider that it has almost ruined the value of property in the rear of those depots; it shut off the rights of way and view of the adjoining proprietors in the rear from the river through the original streets.

Q. What do you mean by original streets?

A. I mean the streets running up and down towards the river. It cuts off access by the closing of the streets that they have closed, but especially the streets running to the river.

Q. Does it not injure also the value of property in that vicinity running parallel to the river?

A. Yes, sir, it does.

Q. Those in front, are they not more affected than those farther back?

A. They are.

Q. How far back do you think property has been seriously damaged by the closing of those streets?

A. It has been seriously damaged as far back as Camp street, more or less, because all the river characters would naturally take those streets if they were not stopped up, & come out in that direction

115 in the pursuit of their business.

Q. Have you been an owner of property in that region?

A. I have.

Q. Where was that property situated?

A. I was owner of three lots of ground in the square bounded by St. Joseph, North Market, Front & Fulton streets.

Q. How long did you own that property?

A. I owned that property from about 1859 until about 1876 or '77, when it was sold by execution and really sacrificed.

Q. What was the property valued at in 1869?

A. That was before the railroad companies came there, I think. I think I should have asked and considered that property worth from eight to ten thousand dollars before the depots were placed there and stopped the streets up.

Q. What was the property sold for when it was sold?

A. I think it was sold for more than it would have brought to the seizing creditors, in order to make it bring over two-thirds of the appraisement, than would have been paid to anybody else; it was purchased by the seizing creditor, and I think he bid on it to make

116 it just pass two-thirds of the appraisement, thirty-two or thirty-three hundred dollars.

Q. If the property had not been purchased by the seizing creditor, how much do you think it would have brought?

A. I don't think I could have got two thousand dollars for it.

Q. Did you not try to dispose of it by private sale?

A. Yes, sir.

Q. What was the best offer that was made to you?

A. After the depots came there I don't think I had any real offer on it; there was no demand for it, and it seemed to depreciate from the moment that the depots were placed there. I lost very good tenants who had the place as a lumber-yard and it remained vacant almost all the time up to the time it was sold. The view was cut off and there was no passage to the river and business was ruined.

Q. Before St. Joseph street was blocked out by the railroad was there a passage on St. Joseph opened to the river?

A. There was, to the best of my recollection. There was a
117 plank-way over a shallow pond out St. Joseph st. or very near St. Joseph street; then there was another way out North Market and South Market streets. There was two passages-ways of wood; the one out North Market and South Market streets was near the edge of this pond, and, as well as I remember, there was some boat gunwales composing part of the way. They were on stanchions with cross-planks up above the water. This pond was being rapidly filled up by the street garbage advancing towards the river—filled up under the authority of the city.

Q. Could drays & vehicles pass?

A. I think they could pass the southern side of this pond out South Market, or Delord perhaps. My memory is not very exact, but it is very distinct that there were such ways.

Q. Is there any other fact you think of enabling us to open those streets?

A. I think the closing of them up was without authority on the part of the city, because the city had granted most of those batture lots to purchasers with all the rights of way and appurtenances belonging to the reality, which included the rights of passage-way and view to the river, as a matter of course. I think the closing of the streets
118, 119 was a high-handed outrage against the public and the adjoining proprietors in the rear, and contrary probably to a hundred articles of the civil code in relation to streets, public places, ways, rights, and servitudes.

Q. You have been a judge in N. O.?

A. Yes, sir.

Q. What court did you preside over?

A. Over the third district court from 1863 to 1864.

The examination was adjourned until 2 o'clock p. m. this day, at which time it was expected that Judge Campbell would be present and cross-examine.

2 O'CLOCK P. M., *February 13th*, 1878.

Examination resumed:

Present, W. W. King, esq., for defendant, and the following-named witness: D. Ramelli, Wm. Creppel, Jas. Callen, Jean Dubarre, and W. W. Handlin, who had previously been examined and are now present to be cross-examined by plaintiffs' attorney if he should see fit.

Judge Campbell up to 2.45 o'clock p. m. not having appeared, Mr. King adjourned the examination to the 21st February, 1878, at 11 o'clock a. m.

120 Objections of plaintiff to the testimony of D. Ramelli, William Creppel, James Callan, Jean Dubarre, and W. W. Handlin, witnesses on behalf of the defendant.

Filed February 21st, 1878.

(Signed) F. A. WOOLFLEY,
Comm'r U. S. Circuit Court, District of Louisiana.

In the circuit court of the United States, district of Louisiana.

NEW ORLEANS, MOBILE & TEXAS R. CO. *vs.* CITY OF NEW ORLEANS. } No. 7972.

The defendant having called M. Ramelli, Wm. Creppel, James Callan,

W. W. Handlin, Jean Dubarre, as witnesses, & examined them severally, subject to the objection on the part of the plaintiff, & the plaintiff upon the close of the examination makes his objections, as follows, to each of the examinations:

That the answers of the said several witnesses to questions as to their opinion of the deterioration of property in different parts of the city from the effect of the constructions made by the plaintiff, and the inquiries about the deterioration of their own property or the property of other persons, & their opinions concerning such matters, are entirely irrelevant to any issues in the cause & illegal as testimony, & the plaintiff moves the court to refer the testimony to the master to report upon its sufficiency & to remove the illegal portions, with a view
121 to its suppression, & that the defendant be taxed with the costs of taking the same.

(Signed) J. A. CAMPBELL,
Sol. for Def't.

NEW ORLEANS, *February 21st*, 1878.

Examination resumed pursuant to adjournment.

Present, W. W. King, esq., for defendant; J. A. Campbell, esq., for plaintiff.

Judge Campbell, on behalf of plaintiff, filed his objections to the testimony of D. Ramelli, Wm. Creppel, James Cullan, Jean Dubarre, and W. W. Handlin, witnesses on behalf of the defendant.

Mr. EDWARD PILLSBURY sworn and examined for defendant:

Direct examination by Mr. KING:

Q. Mr. Pillsbury, what is your occupation or business?

A. Well, I am mayor of the city of New Orleans.

Q. How long have you been mayor?

A. About 14 months from November, 1876.

Q. How long have you been living in New Orleans?

A. Forty-three (43) years living in New Orleans.

122 Q. Are you familiar with that portion of the city from Calliope street down to Canal, the front of the city, particularly?

A. Yes, sir.

Q. Mr. Pillsbury, I wish you would state what effect the closing up or blocking out of the streets running towards the river in that portion of the city has had upon the value of property in that locality.

(Objected to by Mr. Campbell.)

A. I think the blocking up of those streets has been very detrimental to the property and commerce in the immediate vicinity.

Q. Is or not the city of New Orleans interested in property in that vicinity?

A. The city direct*ory*?

Q. Yes.

A. The city claims a certain amount of property there now occupied by some of these railroads.

Q. Has the city sold or not how many squares of ground that were obtained by the city under the compromise known as the compromise of '51?

A. Well, I don't know without referring to documents.

Q. Can you tell by looking at them?

A. I cannot tell without whether the city sold or not; I don't
123 recollect this unless I refer to the archives; I cannot say that a portion of the property had been sold.

Q. Are you familiar enough with the history of the city—you know what according to the original length of the city, in the *fourbourgs*, what streets running up and down the river were the nearest to the river? If you don't know, you need not answer.

A. What streets running parallel to the river?

Q. Yes, sir.

A. It was Front street. It was on the levee, I think; that is my recollection; I think so.

Q. What you call Tchoupitoulas?

A. No, sir; on the levee, at the front of Tchoupitoulas, just where the Saint Mary's Market terminates.

Q. At what time?

A. Well, say about 1835 or 1836, along there.

Q. Was the original levee off of the *fourbourg* of Delord?

A. Well, I don't remember.

B. H. FLASHPOLLER sworn and examined for defendant:

Direct examination by Mr. KING:

Q. You are a citizen of New Orleans?

A. Yes, sir.

Q. How long have you lived here?

124 A. I have lived, off and on, in New Orleans since 1855.

Q. Are you familiar with that portion of the city of New Orleans, especially on the side towards the river, lying between Calliope street and Canal street?

A. Yes, sir.

Q. Do you or not own property in that neighborhood?

A. Yes, sir.

Q. Please state where your property is situated.

A. Corner of Notre Damé and Water streets.

Q. Mr. Flashpoller, please state, if any, what obstructions have been put across Notre Dame street by the New Orleans, Mobile and Texas Railroad.

A. Built the railroad depot across it. It has cut all communication off from my house.

Q. Communication from the river, you mean?

A. Well, yes. The people pass on Julia and Girod. When I built the property I had the right of banquette; I had it given to me by the surveyor, and the railroad, after they filled up alongside of the wharves, closed the water-right into my premises there.

Q. Well, how do you have to approach the river from your property? What route do you have to take?

125 A. Go up to Julia street, or to Girod by the alley.

Q. What effect on the property on Notre Dame street do you consider was produced by the blocking out of Notre Dame street from the river? Did it injure it or improve it? (Objected to by Judge Campbell.) I mean upon the property generally, on Notre Dame street?

A. Well, it has damaged all the property, in my opinion, over seventy-five per cent (75%).

Q. How far back?

A. Well, say to Magazine street.

Q. Mr. Flashpoller, what did the property that you own at the corner of Notre Dame and Water street—describe what it is, its extent; what was the property? Describe the property you own.

A. When I bought it, it was an empty lot; that was in 1866. Then

Notre Dame street was running through, and me and my wife says we will buy this property and we will have a nice little home, ten——

Q. Never mind that. How many feet front each way? Tell me first the dimensions of the property, then the building.

A. I think the lot is twenty-six or twenty-seven feet fronting
126 on Water street and Notre Dame. That is, the whole block; I think it is one hundred and twenty-five feet; it runs through from to Water street.

Q. What did the ground cost you originally?

A. The ground cost me thirty-five hundred dollars ($3,500.00).

Q. Have you improved it since?

A. Yes, sir.

Q. Then the improvements cost you——

A. Well, I have kept an account of it; I think I have the book at my house. The whole property cost me $13,500.00, outside of little repairs that I did not put down.

Q. What use did you make of that property before the obstructions were placed there?

A. I rented it for a coffee-house.

Q. What rent did you get for it?

A. One hundred and twenty-five dollars ($125.00).

Q. Per year or month?

A. One hundred and twenty-five dollars a month. I think I had a lease on it for five years; I won't be positive. Well, I had a lease on it three years, I know.

Q. Well, what has become of your tenant?

A. After the railroad had blocked up the street, she told me
127 she could not pay the rent any more. I reduced it down to one hundred dollars ($100.00) a month; then she wanted it for less than that; I would not give it to her, and she moved out of it, and the house stood vacant for four or five months, and I then got a man; I told him I thought he could make a living in there, and that I would give him the liquors, and he tried it; after he had been there for a little while, he said he could not make his living there, he would have to move out again. I reduced the amount down to sixty dollars ($60.00) a month for him, and he said he could not pay that. I told him then I could not give it any cheaper. The property had cost me so much, and I could not get anything for it; I was looking for the streets to open; and that he should wait. He did hang on for some time, and then at last he moved out of it and the house stood vacant for a good while afterwards, then I rented it for twenty-five dollars ($25) a month.

Q. Is that the rent that you are now getting on that property?

A. Now $25.00 a month.

Q. Mr. Flashpoller, if you were compelled to sell that property,
128 how much do you think you could get for it now?

A. I don't think I could get two thousand dollars for it.

(Judge Campbell objects to all the foregoing testimony.)

Cross-examination by Judge CAMPBELL:

Q. How did you say that you use it?

A. I use it as a coffee-house.

Q. What is the business of a coffee-house?

A. Selling liquor by retail; it was also used as a lodging-house and coffee-house—boarding, eating and drinking.

Q. What did Mr. Armelia do; do you know him?

A. I do not.

Q. You know Mr. Creppel?
A. Yes, sir.
Q. What sort of business does he follow?
A. I think he is living off the rents of his property, if I am not mistaken.
Q. What is the business of Mr. James Cullen?
A. I don't know him.
Q. What is Mr. John Dubarre; what is his business. Do you know him?
A. He was formally a butcher; what he is doing now I don't know.
Q. Did he have any property up there?
A. I cannot tell.
Q. What is Mr. Handlin's profession; what is his vocation?
A. I cannot tell.
129 Q. The liquor business up there was very much injured by this railroad, wasn't it?
A. Oh, yes; it cut all communication off from the house.
Q. Where was the communication to?
A. To the river.
Q. Could you go down to the levee in 1866?
A. Oh, yes, sir.
Q. Dry-shod?
A. Yes, sir.
Q. To the river?
A. Yes, sir; in my opinion it must have been about two blocks or two blocks and a half to the water's edge.
Q. And sailors came up there to these coffee-houses?
A. Well, I don't know that they were sailors; they were men working on the levee, and from the flatboat landing, that is right at the upper side.
Q. What has become of the flatboat landing there now?
A. They are there yet.
Q. Where do they go now to get their drink?
A. I cannot tell; they have got a house, I believe, for selling liquors on Julia street.

EDWARD BURKE sworn and examined for defendant.

Direct examination by Mr. KING:

130 Q. Mr. Burke do you reside in New Orleans?
A. Yes, sir.
Q. How long have you resided here?
A. I have been residing here constantly since 1846.
Q. Are you familiar with that portion of the city, especially the front, lying between Calliope street and Canal street?
A. Yes, sir.
Q. Do you own property in that locality?
A. Yes, sir.
Q. What, in your opinion, Mr. Burke, has been the effect on property in that vicinity by the blocking up of the streets by the New Orleans and Texas Railroad what effect has it had on the property?
A. Oh, very serious effect; I should think it has damaged property there fifty per cent. (50 %) in the neigborhood where my property is situated.
Q. Where is your property?
A. It was a part of three brick buildings near the corner of Saint Joseph and Tchoupitoulas, one ⅌84, one ⅌86, and ⅌88, and I have three

buildings on Saint Joseph, near the corner of Saint Joseph, on Tchoupitoulas.

Q. What use have you put your property to, Mr. Burke?

A. The buildings on Tchoupitoulas were stores; I occupied
131 two of them myself, the other is rented at the present time to a man keeping Western produce business.

Q. And in former years did you rent them or occupy them?

A. I occupied a portion of them, about the same as I do at present.

Q. Did you rent the others?

A. Yes, sir.

Q. What rent did you get for that property before Saint Joseph street was obstructed by the railroad?

A. One of them rented on Tchoupitoulas street at fifty dollars ($50.00).

Q. And those on Saint Joseph?

A. Those on Saint Joseph gave me fifty dollars ($50.00) too.

Q. What rent do you get for them now, or are they rented?

A. I rented a portion of them; they bring me in, say, an average of fifteen or sixteen dollars.

Q. Apiece?

A. Yes, sir.

Q. Mr. Burke, at what price did you value that property before these obstructions had been placed on Saint Joseph street by the railroads?

A. If I wanted to dispose of them?

Q. Before the railroad obstructed, what was the price that you considered them worth?

132 A. On Saint Joseph street they ought to be worth about twenty-five hundred dollars ($2,500.00) each.

Q. And on Tchoupitoulas?

A. On Tchoupitoulas, about four thousand dollars ($4,000.00).

Q. Four thousand dollars each?

A. Yes, sir; I paid for one of them on Tchoupitoulas street $5,800.00. I paid for another one of them $4,400.00, and I think, $4,200.00 for the other.

Q. If you were compelled to sell that property now, Mr. Burke, how much do you think you would be able to get for it?

A. The question is whether I could get a bid on them. The neighborhood has become so deserted, I suppose if they were to be sold at all they might bring two thousand dollars ($2,000.00) each, something thereabouts.

(Judge Campbell objects to all of the foregoing testimony.)

Cross-examined by Judge CAMPBELL:

Q. Has there not been a general decline in lots all over the city?

A. Yes, sir.

Q. Declining ever since 1866 and 1867?

A. They are about as low now as they could be.

133 Q. And gradually going down from year to year all over the city, is it not so?

A. I believe so; yes, sir.

Q. Is there any part of the city that maintains the standard of values of 1868 and 1869? Do you know of any portion of the city—I do not mean in any particular part, but in each part of the city? I sproperty as high now as it was in 1869 and 1870?

A. Well, I am not certain; there may be some fancy property which might bring as much.

Q. But generally?

A. Generally, I don't think property is as valuable in this part of the city because of the obstruction by this railroad. I have been in the liquor business for over 20 years, I believe, on Tchoupitoulas street, when there was only a passage to the river by a foot-path through a pond, and at that time I have known myself to receive twenty and over twenty dollars early in the morning, and since this obstruction we have lost all that trade.

Q. Whereabouts has it gone?

A. Well, I presume, gone down to this part of the city below.

134 Adjourned until Thursday, February 28th, 1878, when plaintiffs' witnesses are to be examined.

DISTRICT OF LOUISIANA, *ss:*

I, F. A. Woolfley, commissioner of the circuit court of the United States for the district of Louisiana, do hereby certify that on the days named in the depositions hereto annexed I was attended at the office of the clerk of the said circuit court by the counsel and witnesses aforesaid; that the said witnesses were by me duly sworn and examined by counsel and their depositions reduced to writing by Leslie Bobb and Charles Brown, phonographers, who were duly sworn to perform their duties faithfully, and the signatures of the said witnesses to their depositions were waived by consent of counsel.

I further certify that the Exhibits "Map No. 1," "Map No. 2," and notarial acts "A^1" and "A^2" were offered in evidence on behalf of the defendant during the taking of said depositions.

New Orleans, February 28th, 1878.

(Signed) F. A. WOOLFLEY,
Comm'r U. S. Circuit, District Court of Louisiana.

135 DISTRICT OF LOUISIANA, *ss:*

I, Leslie Bobb, do solemnly swear that I will faithfully perform my duty as phonographer in the case of The New Orleans, Mobile and Texas Railroad Company vs. The City of New Orleans in the U. S. circuit court for the district of Louisiana. So help me God.

Subscribed and sworn before me February 9, 1878.

(Signed) F. A. WOOLFLEY,
Comm'r U. S. Circuit Court, District of Louisiana.

DISTRICT OF LOUISIANA, *ss:*

I, Charles Brown, do solemnly swear that I will faithfully perform my duty as phonographer in the case of the New Orleans, Mobile and Texas Railroad Company vs. The City of New Orleans in the U. S. circuit court for the district of Louisiana. So help me God.

(Signed) CHAS. R. BROWNE.

Subscribed and sworn before me February 13th, 1878.

(Signed) F. A. WOOLFLEY,
Comm'r U. S. Circuit Court, District of Louisiana.

$40.20, cost of taking depositions paid by City of New Orleans.

(Signed) F. A. W.

136 *Publication of testimony.—Extract from minutes of March 25th, 1878.*

NEW ORLEANS, MOBILE AND TEXAS R. R. Co. vs. CITY OF NEW ORLEANS. } No. 7972.

On motion of W. W. King, of counsel for the defendant in this case, upon suggesting to the court that the testimony has been taken by a commissioner of this court and has been filed in the case, it is now ordered by the court that publication do now pass.

Submission of cause.—Extract from minutes of May 27th, 1878.

NEW ORLEANS, MOBILE AND TEXAS RAILroad Company vs. CITY OF NEW ORLEANS. } No. 7972.

This cause came on to be heard on the bill, answer, replication, exhibits, and testimony in the record, and having been argued by John A. Campbell for complainant and W. W. King and B. F. Jonas for defendant, the court took time to consider.

137 *Note of evidence.—Filed May 27th, 1878.*

NEW ORLEANS, MOBILE AND TEXAS R. R. Co. vs. CITY OF NEW ORLEANS. } No. 7972.

The complainant offered, 3 maps, 10, 11, 12 (annexed to this transcript). Record 3692 supreme court (transcribed on page 138 of this transcript).

Record 19, superior district court (annexed to this transcript).

Testimony of R. W. Rogers taken 28th February, 1878; E. E. Godden, taken same day. (Transcribed on pages 83, 87 of this transcript.)

Defendant offered plan 13, also plans 14 and 15, 19. (Annexed to this transcript.)

Also testimony filed 11 March, 1878, marked 16. (Transcribed on page 90 of this transcript.) Also documents 17 and 18. (Transcribed on pages 186 & 206 of this transcript.)

138 RECORD NO. 3692.—OFFERED BY COMPLAINANT AND FILED MAY 27TH, 1878.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Supreme court of the State of Louisiana.

NEW ORLEANS, MOBILE AND CHATTANOOGA Railroad Co. vs. THE CITY OF NEW ORLEANS. } No. 3692.

Motion and order extending return day of appeal.—Extract from the minutes.

WEDNESDAY, *January 17th*, 1872.

The court was duly opened.

Present, their honors John T. Ludeling, chief justice, and James G.

Taliafero, Rufus K. Howell, W. G. Wyly, William M. Howe, associate justices.

No. 3692.

NEW ORLEANS, MOBILE & CHATTANOOGA Railroad Company *vs.* THE CITY OF NEW ORLEANS ET ALS. } No. 3692.

139 On motion of Geo. S. Lacey, esq., city attorney, and upon filing the certificate of the clerk of the court, it is ordered by the court that the return day for filing the transcript of appeal in this cause be extended to the first Monday in February, A. D. 1872.

Motion and order to fix case by preference.—Extract from the minutes.

MONDAY, *March 11th*, 1872.

The court was duly opened, pursuant to adjournment.

Present, their honors John T. Ludeling, chief justice, and James G. Taliafero, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

N. O., MOBILE & CHATTANOOGA R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 3692.

On motion of Geo. S. Lacey, city attorney, it is ordered by the court that this case be set for hearing by preference on Tuesday the 26th instant.

140 *Cause submitted.—Extract from the minutes.*

The court was duly opened.

Present, their honors James G. Taliafero, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices. Absent, John T. Ludeling, chief justice.

N. O., MOBILE AND CHATTANOOGA R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 3692.

This cause was called for trial, and having listened to argument from James B. Eustis, esq., of counsel for plaintiff and appellee, the court took the same under advisement on the merits and the motion to dismiss the appeal herein upon the briefs now on file for both parties and the supplemental briefs to be filed by the counsel within 15 days from this date.

Decree.—Extract from the minutes.

MONDAY, *May 19th*, 1873.

141 The court was duly opened pursuant to adjournment.

Present, their honors John T. Ludeling, chief justice, and James G. Taliafero, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

N. O., MOBILE & CHATTANOOGA R. R. CO. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 3692.

On appeal from 8th district court for the parish of Orleans.

It is ordered that the judgment herein be annulled and the injunction be dissolved; and it is now ordered that there be judgment for the City of New Orleans and that its prayer in reconvention for an injunction be granted, and it is ordered that the plaintiffs be restrained and inhibited from occupying the property in controversy.

It is further ordered that plaintiffs pay costs of both courts.

Mr. Justice Howell read a separate opinion in this case. Mr.
142 Justice Morgan, concurring in the conclusions arrived at in the opinion pronounced by Mr. Justice Wyly, reserved the right to place the ground of his concurrence in a separate opinion. His honor the chief justice, dissenting from the majority of the court, read a separate opinion herein.

Opinion of the court.—May 19th, 1873.

N. O., MOBILE AND CHATTANOOGA R. R. CO. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 3692.

Appeal from the 8th district court for the parish of Orleans.

Mr. Justice WYLY:

This controversy arises out the acts 19th March, 1868, 17th Febr'y, 1869, and 21st Feb'y, 1870, granting to the New Orleans, Mobile and Chattanooga Railroad, for passenger and freight depots, a space of ground equal to about 4 squares on the batture or levee in front of the city of New Orleans between Calliope and Canal street, and also
143 granting the right to lay tracks and occupy as a railroad a strip of land extending down the levee to Elysian Fields street, and out said street to Claiborne street and beyond it. The plaintiffs took possession and enjoined the City of New Orleans and other parties from interfering with them in any manner.

The city denied the validity of the grant on the ground that the State had no right, title, or interest in the property; and alleged that the batture and street in question belonged to it, and the State could not make the divestiture or deprive New Orleans and its inhabitants of the use of said public place and highway without the exercise of the right of eminent domain, and this respondent further says that the construction of the New Orleans, Mobile and Chattanooga Railroad by the route contemplated through the city and the running therein passenger and freight trains propelled by steam engines or locomotives, and the enjoyment of the grant and the privileges set forth and contained
144 in the several acts referred to, will prevent the use of the batture and Elysian Fields street as a locus publicus and a highway, will destroy the dedications thereof to the public, and will give the plaintiffs the exclusive use of property which belongs to and is needed by New Orleans and its inhabitants.

The court maintained the demand of the plaintiffs, and perpetuated the injunction. The City of New Orleans appealed.

By consent of parties the issue as to the Pontchartrain Railroad Company, joined as codefendants herein, is reserved from the present decision, and as to them the case is indefinitely continued.

The question is, Had the general assembly *had* the right to grant the New Orleans and Chattanooga Railroad Company, for freight and passenger depots and tracks, the property in controversy? If the fee or title to the soil belonged to the State, and its use as public places ceased to be necessary, of course the State, as the proprietor,
145 could make the grant. But it is shown that the State had no title whatever to the property, and it is proved beyond question that its use is necessary for the public. The title of the city to this property is as clear and well established as the title of any political corporation can be to common property, or property dedicated to public use. That portion of the batture given for depots between Calliope and Canal streets was undoubtedly the property of Livingston and the other riparian proprietors who conveyed it New Orleans and dedicated it to public use in the act of donation or compromise of 1820. This cession and dedication was recognized and approved by the legislature.

The batture in front of the old city was reserved for and dedicated to public use when the city was laid out in 1824, and since that time it has been used as a levee or quay. If the fee or title to the soil remained in the sovereignty of France it passed to the United
146 States by the cession, because France ceded forever and in full sovereignty the Territory of Louisiana with all its rights and appurtenances. The ground in question therefor' passed to the United States if it was public property, and it was not transferred to the State of Louisiana when it was admitted into the Union, because the convention which framed the constitution acceded to the terms upon which Congress admitted the State into the Union, and by an ordinance forever renounced all right or title to the waste or unappropriated lands. This was expressly decided in the case of De Armas, 5 L., 207. In a controversy between New Orleans and the United States in relation to the ground in question it was decided in 1836 by the highest tribunal of the land that the United States was without title. (10 Peters, 662.)

That Elysian Fields street was conveyed to New Orleans and dedicated to public use by Bernard Marigny, and has been occupied as a public highway since 1805, is not disputed. It is shown that the occupation of these public places by the plaintiffs, and the running
147 thereon of passenger and freight trains propelled by locomotives, prevent the use and enjoyment of them by the public, and to a great extent defeat the object of their dedication. The street and quays in question were not granted to New Orleans and dedicated to public use to be owned and occupied by the Chattanooga Railroad. The witness, Captain Leathers: "I am engaged in the steamboat business, commanding str. Natchez; I have been engaged in the business above thirty-five years; during the last thirty years have been making weekly landings at the port of New Orleans, discharging cargoes of cotton principally. I am very familiar with the river business, which is now being done, and which has been done for many years past, on the levee of this city. From the wood-work or wharves back to the houses that line the levee—say from Calliope down to Canal street—there is scarcely room enough to do the river business, by which I mean the business of receiving and shipping freight by the river Mississippi.

148 "I am very familiar with the levee from Canal down to Jackson

square, which is between St. Peter and St. Ann streets. There is not more than enough of levee between Canal street and Jackson square and the houses that front the river, and the river itself, to do the business which is now carried on by steamboats and sea-going vessels.

"I am familiar with the tracks of the Chattanooga Railroad as now laid, say from Calliope street down to Jackson square; the effect of the Chattanooga R. R., with its passenger and freight trains and many tracks, is to leave the ships and steamboats without one-third room enough to do their business. The passing to and fro of those trains and carrying on the business of the road would, in my opinion, have the effect of giving to the road almost if not entirely the exclusive use of the batture or levee. There is constantly through the day and all hours of the day a large number of horses and mules engaged in
149 transporting the river freight to and from the levee to the steamboats and ships and sea-going vessels, and I think the passing of the locomotive up and down the levee would seriously interfere with the teams and drivers; there frequently instances of those animals being frightened and running away, and endangering their lives, as also the lives of others. I have seen the cars stopped at the front of my boat several times, entirely blockading my gangway, and stopping my hands from putting out freight during that time; the road has left no room scarcely between the track and the boats. I am not the only one that has been subjected to this kind of inconvenience; there have been several boats, and many of them. As the business of the road increases the river business will be subjected to a corresponding increase of inconvenience, amount' almost to an entire deprivation of the use of the levee. The river business is now almost entirely blockaded up from Jackson square to Custom-house street, and from there nearly ruined by the railroad up as far as St. Joseph street,
150 w'ere the Chattanooga road comes to the river and occupies the entire front. To my knowledge the business of the river has been so obstructed by the use of the batture by the Chattanooga Railroad Company that cargoes of cotton at Vicksburg have been shipped to Savannah, and many owners have shipped their cotton to other ports, which otherwise would have come to New Orleans. In my opinion one-half of the sugar crops will go up the river and not land here on that account. The use of the batture by the road as laid down is tantamount to a monopoly of the batture." The testimony of this witness is corroborated by that of a number of other witnesses, and indeed the truth thereof is not controverted.

If a political corporation can be the owner of property, of which there can be no doubt, it alone can exercise the right of disposition over its property, because the right of disposition is an essential element of perfect ownership. If the State can grant the property of New Or-
151 leans, as attempted in the case before us, New Orleans would cease to be the owner of its own property, because it is the owner who has the exclusive right freely to dispose of his property.

Undoubtedly the State can exercise the right of eminent domain and take for public purposes the property of political corporations as well as the property of individuals upon paying the owners the value of the property so taken. But that is not the controversy here. The question is, can the State give the property of New Orleans to the Chattanooga Railroad Company? We think not. But it is contended that as the grounds in controversy were dedicated to public use, therefore they are a part of the public domain of the State, which can be alienated by it. This is a fallacy. The fee or title was never in the State;

therefore these public places form no part of the public domain of the State, and, as we have said, the State cannot grant what it does not own.

152 The property of the city dedicated to public use is as much its property as any that it may acquire. Indeed, the streets, walks, and quays are more useful and essential to the city and its inhabitants than other property, and they are inalienable by the State. "There can be no difference in principle between ground dedicated as a quay to public use and the streets and alleys of a town; and as to the streets, it may be asked whether the king could rightfully have granted them. This will not be pretended by any one. And it is believed that the public right to a common is equally beyond the power of a sovereign to grant, unless he disposes of it under the power to appropriate property to national use, and then compensation must be paid." (New Orleans vs. United States, 10 Peters, 662.)

"The inhabitants of a town cannot be deprived of their streets, as the streets are essential to the enjoyment of their property; in
153 other words, by closing the streets the value of the buildings of the town would be greatly reduced, if not entirely destroyed. And if ground dedicated to public use, which adds to the beauty, the health, the convenience, and the value of town property, be arbitrarily appropriated by the sovereign to other purposes, is not the value of the property which has been bou't and sold in reference to it greatly impaired? The value may not be reduced to the same ruinous extent as it would be to close the streets, but the difference is only in the decree of the injury, and not in the principle involved." (10 Peters, 662.)

If the State could grant part of the quays and street in question for depots and railroad tracks it could grant the whole; it could grant all the streets and public places, and entirely deprive the city of access to the river, and virtually make its inhabitants prisoners in their own houses. The grant to the plaintiffs differs from this only in the degree of the injury, not in the principle involved. If the State
154 could make the grant it can authorize the enclosure of the tracks, as it did the space given for the depots, and this would virtually close the port of New Orleans, because the enclosure of the tracks, extending most all along the entire front, would cut off communication with the river, and destroy the commerce of the city.

But it is urged that the State can dispose of the property of New Orleans because it granted it corporate powers, and can at will modify or abolish the charter. It is true the powers of government delegated to the city may be revoked and its charter abolished, but it by no means follows that the property of the corporation would pass thereby to the State.

"In respect to public or municipal corporations (says Mr. Kent), which exists only for public purposes, as counties, cities, and towns, the legislature, under proper limitations, have the right to change, modify, enlarge, restrain, or destroy them, securing, however, the property for the use of those for whom it was purchased." (2 Kent, 305.)

155 Notwithstanding the power of the legislature over the city of New Orleans, its property is protected like that of any other person. (Story on the Constitution, sections 1393, 1399; 2 Peters, 380, 412, 413, 627, 657; 6 Cranch, 67, 134; 4 Hill, 144; 3 Dallas, 386; 8 Wend., 85; 18 Wendall, 56, 61, 63; Cooley on Limitations, 487; 21 Penn., 147; 7 Wal., 289; 9 Cranch, 292; 5 Paig, 147; 11 Wend., 157; People ex rel. Failing vs. Commissioners of Town Polantine, 53 Barbour; and 3 Amer-

ican Law Times Reports, page 6; Constitution, art. 110; Constitution of the United States, art. 1, section 10.)

In Darmouth College vs. Woodward, 14 Wheaton, Justice Story says: "It may also be said that corporations, such as towns, cities, and counties, may in many respects be subject to legislative control. But it will hardly be contended, in respect to such corporations, that the legislative power is so transcendant that it may at its will take away the private property of the corporation, or change the uses of its
156 private funds, acquired under the public faith. Can the legislature confiscate to its own use the private funds which a municipal corporation holds under its charter without any default or consent of the corporators? If a municipal corporation be capable of holding devices and legacies to charitable uses, as many municipal corporations are, does the legislature, under our forms of limited government, possess the authority to seize upon these funds and appropriate them to other uses, at its own arbitrary pleasure, against the will of the donors and the donees? From the very nature of our government the public faith is pledged the other way. The truth is, the government has no power to make a grant even of its own funds when given to a private person or a corporation for special uses."

The legislature certainly has no greater power that the sovereigns of France and Spain had to the batture or levee in question, and the Supreme Court of the United States held in the case in 10th Peters
157 referred to, where a part of the identical property was in controversy, that "the public right to the common was beyond the power of the sovereign to grant."

New Orleans or its inhabitants had therefore a right to the levee or quay which could not be defeated, and it was "beyond the power of the sovereign to grant," this property to any one long before Louisiana became a State and long before there was a corporate power to the city. The right to use the batture as a public place therefore exist' independently of the delegation of corporate power, and the modifying or withdrawing thereof can in no manner affect it. So, therefore, whether the State recalled the power of government delegated to the city or not is immaterial. The right of the inhabitants cannot be defeated, because the proof shows that the levee is absolutely necessary to public use, and the occupation thereof by the plaintiffs impairs and greatly defeats the object of its dedication.

158 When a locus public becomes unnecessary for public use, of course the State can change the destination; it then becomes property in commerce belonging to and subject to the will or disposition of the owner, whose rights were in abeyance pending the existence of the charge or servitude. But without the consent of the donors and the donees, as in the case before us, the State cannot take the property dedicated to one purpose and apply it to another. It cannot take the batture granted to New Orleans for a quay, and to be used for the commerce of a river, and give it or any part of it to the Chattanooga Railroad. As the State was utterly without title the grant to the plaintiffs conferred no right whatever to the property. It is useless to argue that the grant to the railroad only give a temporary use of the ground, and that it is subject to be recalled by the State. If the State had the right to make the grant the plaintiffs have the perpetual use of the property, which is equivalent to ownership, and the State cannot
159 recall or in any manner defeat it, because of the provision of the Federal Constitution prohibiting a State from impairing the obligation of a contract.

It is also absurd to argue that the grant is only the exercise of an administrative power over these public places. A grant which confers exclusive use in perpetuity and subjects a thing granted to such debts and encumbrances as the grantee may see fit to impose cannot fairly be called the exercise of merely administrative power over a locus publicus.

The grant virtually changes the destination and passes the title (if the State had any to pass), because it puts the property in commerce and subjects it to exclusive control and disposition of the plaintiff, makes it as the common pledge of their creditors liable to seizure under execution. Here then a considerable part of a locus publicus, proved to be essential to the existing object of the dedication, is granted to a private corporation in perpetuity, can be sold, mortgaged, and otherwise subjected to their debts, and yet it is gravely argued that this is not
160 a change of destination and a grant of the fee, but is only a mode of regulating or administering a locus publicus which the State can rightfully exercise. The proposition is too absurd to require serious argument to refute it.

After carefully examining the record and considering the authorities and able printed arguments presented by the eminent counsel engaged in this litigation we have come to the conclusion that plaintiffs must fail in their demand, for two reasons, either of which seems to be fatal to their pretensions.

1st. Because the legislature could not change the destination of these public places, bring them into commerce, and subject them to the disposition of the plaintiffs while the object of the dedication continues, and it is proved that these public places are now essential to the uses for which they were dedicated to the public.

2d. Because if the State could have changed the destination it could not have granted the property, because the moment the charge
161 or servitude in favor of the public is removed the property stands subject to the will and disposition of its owner, the City of New Orleans, and, like all other property in commerce, it can only be disposed of by the owner.

As the State was not the owner the plaintiffs acquired no title by the grant. Much has been said of State sovereignty and of the power of the State over the city, but we cannot in this controversy adjust the matter or determine the limits of this power, because the State is not a party, and because the solution of the question is not necessary in this case.

The State has simply passed by the grant whatever title it had to the plaintiffs, and this suit is simply a controversy for property between persons holding by different grants. In order, therefore, for the plaintiffs to recover they must show a title superior to the titles of those who granted the property to New Orleans and dedicated it to public use.

So, therefore, whether the public places in controversy can
162 be administered by the State or the city is a question that does not concern the plaintiffs. When it is ascertained, as we have, that they acquired no title by the grant, their cause of complaint is ended.

It is, therefore, ordered that the judgment therein be annulled and the injunction be dissolved, and it is now ordered that there be judgment for the City of New Orleans, and that its prayer in reconvention for an injunction be granted, and it is ordered that the plaintiffs be

restrained and inhibited from occupying the property in controversy.
It is further that plaintiffs pay costs of both courts.
(Signed) W. G. WYLY, *Ass. Justice.*
(Signed) JAMES G. TALIAFERO,
Ass. Justice.

I concur in the conclusions arrived at in the opinion pronounced by Mr. Justice Wyly and reserve the right to place the grounds of my concurrence in a separate opinion.
(Signed) P. H. MORGAN,
Associate Justice.

163 *Concurring opinion of Mr. Justice Howell.*

The plaintiffs' counsel states the question in this case thus:
"Has the State the power to make the grants of authority to the plaintiffs to lay tracks, construct depots, and to occupy the batture for the purposes set forth in the acts of the legislature relative to the corporation?"
I think the legislature may grant such authority as to "public places," but in my opinion a portion of the batture embraced in the grants has been reduced to the ownership of the city of New Orleans, and as to such portion the authority of the State is no greater than to any other property held in private ownership so long as the municipal corporation exists.
I therefore concur in maintaining the injunction in favor of the city only as to the property or squares shown to belong to it, but in other respects I think the judgment of the lower court should be affirmed.

164 *Dissenting opinion of Mr. Chief Justice Ludeling.*

The opinion of my associates in this case is, according to my understanding, so diametrically opposed to the jurisprudence of this State and most of the other States of this Union that I am compelled to dissent from it. The question involved in this case is simply whether or not the legislature can control the public quay or levee of the city of New Orleans without the consent of the city.
To show that this is the question for decision I quote from the brief of the counsel for the city:

"BATTURE ABOVE CANAL STREET.

"The King of France, prior to the year 1763, granted to the order of Jesuits, for a plantation, certain property lying on the Mississippi River, above Canal street, having thirty-two arpents front on the Mississippi and running back to a depth of about fifty arpents; and for the same purpose he granted to various other persons property lying above
165 the aforesaid thirty-two arpents. In 1763 the Jesuits' plantation was confiscated by the French Government, divided, and sold. The first subdivision above Canal street thus sold contained, say, seven arpents, face au pleuve, and five other subdivisions of five arpents each was sold in like manner. One Bertrand Gravier acquired the first subdivision about 1788; the second, lying immediately above Gravier, was acquired by Delord Sarpy, the dividing line between the Gravier and Delord Sarpy claims being now designated by Delord street. Gravier

in 1788 divided his property into squares and lots and annexed to the city as suburb St. Marie. Sarpy converted his property from rural to urban in 1806. At that time the 'Big Road,' now Tchoupitoulas street, formed the division between the lots of ground and the batture in front thereof, which was then used by the public as locus publicus.

"Edward Livingston and others claiming, as riparian proprie-
166 tors, to be owners of the entire alluvian or batture in front of the aforesaid suburb of St. Marie, and the accretion to become attached to the same, by a certain act between themselves and the city of New Orleans bearing date on or about the 20th day of September, 1820, dedicated the aforesaid batture and future accretion to public use, and for the purposes of business and commerce, and upon the express understanding and condition that the same should thereafter remain and continue a locus publicus, out of commerce, and not affected by any adverse claim or grant which might be set up.

"Under and from the time of the dedication above referred to, that portion of the batture on and over which the New Orleans, Mobile and Chattanooga Railroad Company claim to construct their buildings and to run their road, with certain exceptions which will be shown hereafter, remained open for use as a public place until the rights of the public to the same were interfered with by the said company.

"BATTURE BELOW CANAL STREET.

167 "On the 6th day of September, 1717, a charter was granted by the King of France to a corporation styled the 'Western Company,' and under the auspices of that company the ground where the old city of New Orleans now stands was selected as a place for the principal settlement of the province, and the foundation of the city was laid. In 1724 and 1728 all the batture lying in front of the old city of New Orleans was laid off as a quay, and thus and otherwise was dedicated as a locus publicus, and as common property, to the use of which all of the inhabitants of the city of New Orleans, and even strangers, became entitled.

"ELYSIAN FIELDS STREET.

"All that portion of ground or real estate claimed by the plaintiff, and over which they seek to run their road, extending from the point of intersection of the batture, lying in front of the old city of New Orleans with Elysian Fields, back to the point where the last-mentioned street intersects with Claiborne street, was dedicated by private individuals, by ordinances of the said city of New Orleans and
168 otherwise, as parts of a public street or highway, and for the convenience and use of inhabitants of the said city and others; and the same has been possessed, used, and enjoyed as a street highway or public place for more than thirty years before the commencement of the present suit."

The interference of the New Orleans, Mobile and C. R. R. Co. complained of was authorized by an act of the general assembly of Louisiana, which act the defendant alleges is unconstitutional because it divests vested rights and authorizes the taking of private property without just compensation.

It is manifest, therefore, if the general assembly has the right to control the use of this public place, nay even to change its destination, the interference of the company is not unlawful; as early as 1848 this court held, in Delabigarre vs. The Second Municipality of New Orleans,

that "the sovereign alone has the right to change the destination of public places." Under the state of facts presented by the record, the attempt of the defendants to change the destination of the
169 ground was a glaring usurpation of power from which no legal effects result. The usurpation spoken of in that case was the passage of a resolution by the municipality ordering a portion of the batture to be sold.

In Parish vs. Municipality et als. this court said: "We have already stated that the conditions appendant to the nominal gift of the batture amounted to a dedication of it to the public to be used as an open space, and had no other object. The defendants might, for purposes of public utility, thus deprive the city of the right of alienating the batture or of erecting buildings upon it. But, as we held in the case of The State of Louisiana vs. The Executors of McDonough et als, such a stipulation was at all times under the control of the legislature, who could modify the effects of it and change the destination of the property, whenever such a change became a public advantage."

Its power to change the destination of it was expressly recognized by us in the case of Delabigarre vs. Second Municipality, 3 An. 330.

The power of the legislature to change the destination of pub-
170 lic places had been previously recognized in the case of De Armes vs. The Mayor et als., 5 La., 174 & 194; The Mayor et als. vs. Hopkins, 13 La., 351; New Orleans vs. United States, 10 Peters, 733; Municipality No. 2 vs. New Orleans Cotton Press, 18 La., 122. "These cases were all argued by the ablest counsel at the bar, and the opinions of the court were prepared with uncommon care. In two of them Judge Martin dissented on other points, but the court was in all the cases unanimous in recognizing the power of the legislature to change the destination of the quay and of the batture in front of the city of New Orleans. After so many solemn adjudications the defendants do not appear to have had any serious claims which they could compromise, so that while the act of 1820 was a compromise under the form of a donation, the act executed in 1851 would seem to be a donation under the form of a compromise. The plaintiffs acquired no rights under that act, the gift not being intended for them. The act passed by the legislature in 1850 has been adduced by the defendants in support of some undefined right. It is our duty to give full effect
171 to that act so far as it changes the destination of a portion of the batture and authorizes the sale of it.

"But we deem it also our duty to disregard, as an assumption of judicial power unauthorized by the constitution, whatever in it may be considered as recognizing in the defendants any legal rights under the compromise after the change of destination of the property." (8 An. 149.)

What is this batture, levee, or locus publicus, upon which the defendant has built its railroad tracks and depots, under the authorization of the legislature?

It is a public place which combines the public purposes of a landing for steamboats and vessels, a place for the temporary deposit and keeping of goods, a place for the arrival and departure of travellers and their baggage, and a public highway for vehicles employed principally in the transportation of articles of commerce. It is a public thing according to the definition of the code—"common property to the use of which all the inhabitants of a city or other place, even stran-
172 gers, are entitled in common, such as streets, the public walks, the quays." (C. C., 458.)

Whenever the public is concerned the State is not without an interest, and may consequently legislate upon the subject. In this case, however, the legislature has not changed the destination of the property, and the grants or privileges conferred upon the railroad company are for the convenience and benefit of the public. The testimony of witnesses has been referred to, to shew that the use of the batture by the railroad company will be injurious to the commerce of this city. In my judgment this testimony only proves that the witnesses are about a quarter of a century behind the age in which they live. The defendant is a municipal corporation which is defined to be "an investing the people of a place with a local government thereof." Such corporations are created and exist for the public advantage; they can exercise only such powers as are conferred upon them by the legislature, which may be withdrawn from them by the legislature at will, unless re-
173 strained by the constitution. There is no restraint on this power of the legislature in the constitution of this State. The legislature might take away the right of the city to legislate in any manner in regard to this batture. In the 5th An. our predecessors said: "The government of cities and towns, like that of the police juries of parishes, forms one of the subdivisions of the internal administration of the State, and is absolutely under the control of the legislature." (661.)

Judge Dillon, in his work on municipal corporations, says: "With the exception of certain constitutional limitations, presently to be noticed, the power of the legislature over such corporations, is supreme and transcendant; it may change, divide, and even abolish at pleasure, as it deems the public good require." (P. 70 et seq., 3 Wend. 1325. Cooley on Constitutional Limitations, p. 191 2, 14 An. 406; 12, An. 515.)

Municipal corporations are mere instruments or agents of the State government. Consequently, if the city of New Orleans has actually
174 purchased the batture, it could not control it as a private individual could his property.

"Being a mere agency of the government, it is evident that the municipality cannot itself have that complete and absolute control and power of disposition of its property which is possessed by individuals over their own. For it can hold and own property only for corporate purposes, and these purposes are liable at any time to be so modified by legislation as to render the property no longer available." (Cooley, C. L., p. 235.)

At page 88 of his work, Judge Dillon says: "The legislature as trustee for the general public has full control over the public property and the subordinate rights of municipal corporations. Accordingly, it may authorize a railroad company to occupy the streets in a city without his consent and without payment."—(See Clinton vs. Railroad Co., 24 Iowa, 455; People vs. Kerr, 27 N. Y., 188; R. R. Co. vs. Applegate, 8 Dana, 289; Wagner vs. R. R. Co., 25 N. Y. 526, 533; Protzman vs. R. R. Co., 9 Ind., 467; 13 Ind., 353, 551; Moses vs. R. R. Co., 21 Ill.
175 522; Cooley on Const. Lim. 555, 556; 17 N. Y., eq. 75; 17 Barb., 494; 47 Pa. State, 325; 35 Cal., 325.) See, also, Redfield on Railways, p. 259, vol. 1. He says: "The fee of the streets of a city, where it has been acquired by the municipality under the right of the eminent domain, becomes a public trust for general public purposes, and is under the unqualified control of the legislature, and any legislative appropriation of it to a public use is not to be regarded as the appropriation of private property so as to require compensation to the city or municipality to render it constitutional."

I think the judgment of the district court should be affirmed.

Motion and order for time.—Extract from the minutes.

TUESDAY, *May 27th*, 1873.

The court was duly opened. Present, their honors John T. Ludeling, chief justice, and James G. Taliafero, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

176 N. O., MOBILE AND CHATTANOOGA R. R. CO. *vs.* CITY OF NEW ORLEANS. } No. 3692.

On motion of William W. Howe, of counsel for the plaintiff and appellee—

It is ordered by the court that appellee be allowed a delay until the first day of August, 1873, to file briefs in support of the petition for rehearing in this case.

Rehearing granted.

MONDAY, *December 1st*, 1873.

The court was duly opened pursuant to adjournment.

Present, their honors John T. Ludeling, chief justice, and James G. Taliafero, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

His honor the chief justice pronounced the judgment and decree of the court in the following cases:

NEW ORLEANS, MOBILE AND CHATTANOOGA R. R. Co. *versus*
177 THE CITY OF NEW ORLEANS ET ALS. } No. 3692.

It is ordered that the rehearing applied for in this case be granted. (Extract from the minutes.)

Motion and order granting oral argument.—Extract from the minutes.

TUESDAY, *December* 20, 1873.

The court was duly opened.

Present, their honors John T. Ludeling, chief justice, and James G. Taliafero, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

N. O., MOBILE AND CHATTANOOGA R. R. CO. *vs.* CITY OF NEW ORLEANS. } No. 3692.

On motion of William W. Howe, esq., of counsel for plaintiff, it is ordered by the court that oral argument be permitted herein on the rehearing.

178 *Order and continuance.—Extract from the minutes.*

FRIDAY, *December 19th*, 1873.

The court was duly opened.

Present, their honors John T. Ludeling, chief justice, and James G.

Taliafero, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

N. O., MOBILE AND CHATTANOOGA R. R. Co. vs. CITY OF NEWORLEANS ET ALS. } No. 3692. (On rehearing.)

This case was called for trial, whereupon the court listened to argument from John A. Campbell, esq., of counsel for plaintiff and appellee, and William W. King, esq., of counsel, and George S. Lacey, city attorney, on behalf of the defendants, appellants herein, and the usual hour for adjournment having arrived, ordered said case to be continued for resumption of argument to-morrow, Saturday the 20th inst.

179 *Order: Case submitted.—Extract from the minutes.*

SATURDAY, *December 20th*, 1873.

The court was duly opened.

Present, their honors John T. Ludeling, chief justice, and James G. Taliafero, Rufus K. Howell, William G. Wyly, Philip H. Morgan.

N. O., MOBILE AND CHATTANOOGA R. R. Co. vs. CITY OF NEW ORLEANS ET ALS. } No. 3692. (On rehearing.)

This case was called for resumption of trial, and having heard argument from John A. Campbell, esq., of counsel for plaintiff and appellee—

The court took said case under advisement upon the briefs for both parties and the papers now on file, counsel on behalf of the defendants and appellants being allowed a delay of ten days to file a supplemental brief herein.

180 *Decree.—Extract from the minutes.*

MONDAY, *May 4th*, 1874.

The court was duly opened, pursuant to adjournment.

Present, their honors John T. Ludeling, chief justice, and James G. Taliafero, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

His hon. Justice Morgan pronounced the judgment and decree of the court in the following case:

NEW ORLEANS, MOBILE & CHATTANOOGA R. R. Co. vs. CITY OF NEW ORLEANS ET ALS. } No. 3692. (On rehearing.)

It is ordered, adjudged, and decreed that the judgment heretofore rendered by us be avoided, annulled, and set aside; and it is now ordered, adjudged, and decreed that the judgment of the district court be affirmed, with costs.

Mr. Justice Wyly read a dissenting opinion in this case.

181 Mr. Justice Taliafero also dissented from a majority of the court and concurred in the dissenting opinion of Mr. Justice Wyly.

* * * * * * *

Opinion of the court.—May 4th, 1874.

NEW ORLEANS, MOBILE AND CHATTANOOGA R. R. Co. *vs.* THE CITY OF NEW ORLEANS. } No. 3692.

Appeal from the 8th district court for the parish of Orleans.

Mr. Justice MORGAN.

The sole question presented in this case is, has the State the power to grant to a railroad company the right of way through a street in this city? A thorough examination of this question has led us to the conclusion that it has.

It is therefore ordered, adjudged, and decreed that the judgment heretofore rendered by us be avoided, annulled, and set aside, and it is now ordered, adjudged, and decreed that the judgment of the district
182 court be affirmed with costs.

Dissenting opinion of Mr. Justice Wyly.

The State can grant the right of way to a railroad company, but the company can only get the land necessary for the tracks and depots by expropriation or purchase. I had occasion to express my views on the main question involved in the case in the opinion of this court delivered on 19th May, 1873.

I therefore dissent in this case.

(Signed) W. G. WYLY.

I concur in the dissenting opinion of Mr. Justice Wyly.

(Signed) J. G. TALIAFERO, *Associate Justice.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme court of the State of Louisiana.

I, Alfred Roman, clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify
183 that the foregoing pages, together with the printed book marked X and the copies of maps marked D. N. O., do contain a full, true, and complete transcript of all proceedings had in the eighth district court for the parish of Orleans in a certain cause, wherein New Orleans, Mobile and Chattanooga Railroad Company was plaintiff and the City of New Orleans et als. were defendants; and also of all proceedings had, orders, opinions, and decrees rendered in said cause in this court on the appeal taken by said City of New Orleans, Pontchartrain Railroad Co., and George Pandely, defendants herein, which appeal is now on the files thereof under No. 3692.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court, at the city of New Orleans, on this 16th day of March, anno Domini one thousand eight hundred and seventy-eight, and in the 102d year of the Independence of the U. S. of America.

[SEAL.] (Signed) ALFRED ROMAN, *Clerk.*

184 Supreme court of the State of Louisiana.

I, Thomas C. Manning, chief justice of the supreme court of the State of Louisiana, do hereby certify that Alfred Roman is clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans; that the signature of Alfred Roman to the within certificate is in the proper handwriting of him the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this the sixteenth day of March, A. D. one thousand eight hundred and seventy-eight, and in the one hundred and second year of the Independence of United States of America.

[SEAL.] (Signed) TH. C. MANNING,
Chief Justice of Supreme Ct. of La.

185 Supreme court of the State of Louisiana.

I, Alfred Roman, clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that the honorable Thomas C. Manning is and was at the time of signing the foregoing document the presiding judge of our supreme court, and that the signature affixed to the same is in the proper handwriting of him the said judge.

In faith whereof I have hereunto set my hand and affixed the seal of this honorable court, at the city of New Orleans, this the sixteenth day of March, anno Domini one thousand eight hundred and seventy-eight, and in the one hundred and second year of the Independence of the United States of America.

[SEAL.] (Signed) ALF'D ROMAN, *Clerk.*

186 DOCUMENT 17, REFERRED TO IN NOTE OF EVIDENCE.

Exhibit A 1, *offered in evidence by defendant, before F. A. Woolfley, commissioner, and also numbered* 17, *and offered in evidence by defendant May 27th*, 1878.

30th June, 1851.—Compromise between the municipality No. two and certain original front proprietors of batture.

STATE OF LOUISIANA, *City of New Orleans:*

Be it known that this day, before me, Hilary Breton Cenas, a notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared Alexander Brother, Henry Renshaw, and Charles Dabney Yancy, of the said city of New Orleans, composing the finance committee of the council of municipality number two of said city, and herein acting in their capacity as such, under the authority of a resolution of said council, adopted on the seventeenth day of June instant, a duly certified copy whereof is hereunto annexed for reference, parties hereto of the first part, and with them also came and appeared the parties hereinafter named, parties hereto of the second part, being the original parties or the agents, heirs, and legal representatives of the parties to a certain
187 act, commonly called a donation, passed on the twentieth day of September, eighteen hundred and twenty, before Hugues Lavergne, then a notary public in this city, between the said original

parties, as actual possessors of the batture in front of the then faubourg Saint Mary and the mayor, aldermen and inhabitants of the city of New Orleans, which act is now to be found in the office of Theodore O. Stark, a notary public in this city, the successor of William Christy, who was the successor of the said Lavergne, to wit:

First. Christophe Toledano, of this city, one of the original parties to the said donation.

Second. Victor Roumage and Ambroise A. Partlo, of this city, testamentary executors of the late Louis B. Macarty, late of this city, deceased, and herein acting in their capacity as such.

Third. The following, comprehending all the heirs and legal representatives of the late Elie Victor Jourdain, late of this city, deceased, to wit: 1st, John B. V. Jourdain, of lawful age, son of the said deceased; 2nd, Mistress Leonide Jourdain, daughter of the said deceased and wife of Adelurd Blondean, of this city, she being of lawful age, and herein duly assisted by her said husband; 3rd, Elie Tarrault
188 Lavillebeuvre, son of Jean N. Lavillebeuvre by his late wife, the late Mistress Elizabeth Chaviclée Jourdain, daughter of the said deceased, the said appearer being of lawful age; 4th, Mistress Aspasie Lavillebeuvre, daughter of the said Jean N. Lavillebeuvre and his said late wife and now wife of Samuel Jarvis Peters, junior, she being of lawful age, and herein duly assisted and authorized by her said husband; 5th, Mistress Stephaine Josephine Lavillebeuvre, daughter of the said Jean N. Lavillebeuvre and his said late wife, she being above the age of puberty and wife of Victor J. Forstall, and by him herein duly assisted and authorized; and 6th, the said Jean N. Lavillebeuvre, herein acting in his capacity of natural tutrix of his minor children, Suzanne, Eugenie, and Jourdain Lavillebeuvre, the lawful issue of him and his said late wife, all residing in this city and composing the whole of the heirs of the said late Elie Victor Jourdain as aforesaid.

Fourth. The following, comprehending the whole of the heirs and legal representatives of the late Vincent Rillieux, late of this city, deceased, to wit: 1st, James P. Freret, William Freret, John Freret, and
189 Mistress Eugenie Freret, of lawful age, wife of James Stewart, and herein duly assisted and authorized by her said husband, the said appearers being the sole heirs of their late mother, whose name was Eugenie Rillieux and sister of the said late Vincent Rillieux; 2nd, Mistress Heloise Marie Rilleux, widow of the late L. M. Reynaud, late of this city, deceased, and sister of the said late Vincent Rillieux; 3rd, the following, being the children and grand-children of the late Mistress Marie Desiree Rillieux, sister of the said Vincent Rillieux, and late wife of Jean Baptiste Etienne Germain Musson, of this city: Michel Musson, of lawful age, Mistress Anne Eugenie Musson, wife of Charles Francis Louis Defaure, Conte de Rochefort, residing in France, herein represented by her brother, the said Michel Musson, by virtue of an act of procuration passed before J. C. Brent, consul of the United States at Paris, on the twenty-third day of September, eighteen hundred and thirty-nine, and annexed to an act passed before Adolphe Mazareau, a notary public in this city, on the sixteenth day of December, 1839; Eugene Musson, now in California, herein represented by his brother, the said Michel Musson, by virtue of an act of procuration passed
190 before L. Herrman, late a notary public in this city, on the second day of March, eighteen hundred and forty-nine; the five minor children of Mrs. Marie Celestine Musson, wife of Laurent Pierre Augustin Heyacinthe Du Gas, of Paris, now deceased, and herein represented by their grandfather, the said Germain Musson; Henry Germain Musson,

now residing in Europe, herein represented by his brother, the said Michel Musson, by virtue of an act of procuration passed before A. Gillors, chancellor-general of the French legation at Athens, in Greece, on the nineteenth day of September, eighteen hundred and forty-three, a certified copy whereof is annexed to an act passed before William Christy, then a notary public in this city, on the thirteenth day of May, eighteen hundred and forty-four; 4th, Mistress Marie Antoinette Rillieux, a sister of the said late Vincent Rillieux and widow of the late Michael Smith, deceased, now residing in England, and herein represented by the said Germain Musson, by virtue of an act of procuration, passed before Lairtullier and his colleague, notaries in Paris, on the thirty-first day of August, eighteen hundred and thirty-seven, and annexed to an act passed before Adolphe Mazareau, a notary public
191 in this city, on the tenth day of January, eighteen hundred and thirty-eight; and 5th, Mistress Caroline Nehette Landreaux, daughter of the late Melicente Rellieux, sister of the said Vincent Rillieux, and of the late Honore Landreaux, deceased, and now wife of N Kerinon, she being herein duly assisted and authorized by her said husband.

Fifth. The following, composing the whole of the heirs and legal representatives of the late Toussaint Mossy, and of his late wife, Mrs. Marie Aimee St. Arnaud, deceased:

1st, Jules Mossy; 2nd, Hypolite Mossy; 3rd, the minor children of the late Toussaint Mossy, junior, deceased, to wit: Rose Aimee, Eliza, Eugenie, and Victor Mossy, herein represented by their mother, and natural tutrix, Mrs. Eliza Armand, widow first of the said Toussaint Mossy, junior, and second of the late Michel Rey, deceased; and, 4th, the above-named three branches as heirs of their late brother, the late Paul Mossy, deceased, and of his daughter, the late Celestine Mossy, who died a minor, leaving as her only and forced heir her grandmother, Mrs. Caroline Trudeau, widow of the late Thomas Urquhart, deceased, the said grandmother having renounced her claims to the said
192 succession, by an act passed before A. Ducatel, a notary in this city, on the thirteenth day of November, eighteen hundred and fifty.

Sixth. The following, comprehending the whole of the heirs and legal representatives of the late John Linton, deceased: 1st, Stephen Duncan Linton, of lawful age; 2nd, Mistress Charlotte Bingaman Linton, of lawful age, and wife of Francis Surget, junior, of Natchez, Mississippi, and herein duly assisted and authorized by her said husband, here present and approving; and, 3rd, Washington Jackson, junior, herein acting as the agent and attorney in fact of Stephen Duncan, of Natchez, aforesaid, and guardians of the minors Mary Atwell Linton and John Linton, by virtue of the annexed power of attorney.

Seventh. Winter and McCall: 1st, Henry McCall, one of the members of the late firm of Winter & McCall, original parties to the aforesaid contract or compromise, and herein acting for and in behalf of himself; and, 2nd, George W. Christy, herein acting as the agent and attorney in fact of Mistress Mary P. Winter, only daughter and heir of the late Joseph Winter, late partner of the said McCall, of lawful age, and now wife of Henry W. Whiting, of the city of New
193 York, by virtue of the annexed power of attorney.

Eighth. Mistress Louise Livingston, widow of the late Edward Livingston, and Mistress Cora Livingston, the only child of the said Edward Livingston, and now wife of Thomas P. Barton, both herein

represented by Randell Hunt, who acts by virtue of the annexed power of attorney, dated on the fourteenth day of January last (1851).

Ninth. Miss Amaryllis Laura De Labrigarre, and Miss Louisa De Labrigarre, wife of Philip N. Searle, both of lawful age, and the only surviving heirs of their father the late Peter De Labrigarre, both herein represented by Robert N. Ogden and Abner N. Ogden, who act by virtue of the annexed power of attorney, dated on the tenth day of April, 1850.

Tenth. The heirs of Bertrand Gravier: 1st, Jacques Gravier, son and only heir of Bertrand Gravier, jun'r, and only testamentary heir of Jeannie Gravier and heir for one-half of the late Jean Gravier, late of this city, herein represented by Henry R. Denis, acting under and by virtue of the annexed power of attorney, or duly certified copy of a power of attorney, deposited in the office of Adolphe Mazareau,
194 a notary public in this city, on the 29th day of October, 1850; 2nd, Jeannie Bordier, wife of Helant Pettit, acting in her own name, and as heir for one-half of the said late Jean Gravier, and herein represented by Carl C. Kohn, who acts by virtue of a power of attorney, duly recorded in the office of the said Mazareau, notary, on the 12th day of July last past, a duly certified copy of which is hereto annexed.

Eleventh. The heirs of the late Alexander Labranche: 1st, Octave Labranche; 2nd, Alice Labranche; 3rd, Adaline Labranche, widow of Drousin Labranche; 4th, Felicite Labranche, widow of Edmund Fortier, herein represented by the said Henry R. Denis, by virtue of a power of attorney passed before Francis Cheux, recorder and ex-officio notary public in and for the parish of Saint Charles, in this State, on the 30th December, 1850, a duly certified copy whereof is hereunto in the margin annexed for reference; 5th, the heirs of the late Louis Labranche, son of Alexander Labranche; Marie Louise Météyé, Alexander Philip Auguste Météyé, and Richard Francis Canute Météyé, minor children of the late Madame Labranche, daughter of the said Louis Labranche and of Francois Météyé, her husband, said minors herein represented by the said Henry R. Denis, by virtue of a power of
195 attorney executed under private signature on the 24th day of June, 1851, and duly acknowledged before Philip Lacoste, notary in this city, on the 1st day of July instant, and hereunto annexed.

Twelfth. 12*d*. And, in fine, the several persons whose signatures are hereunto respectively subscribed, being the other original parties to the compromise or contract of the twentieth day of September, eighteen hundred and twenty, hereinbefore mentioned and referred to, or the duly authorized agents, heirs, or legal representatives of the same; which said appearers declared that whereas by the aforesaid act of the twentieth of September, eighteen hundred and twenty, the new levee, now constituting New Levee street, together with all the batture then formed or which might thereafter be formed on the outside of said levee, extending to the water's edge of the river Mississippi, along the front of the then faubourg Saint Mary, from the city line below to the property of W. W. Montgomery above, were ceded and given to the city of New Orleans as property inalienable and not liable to seizure, but to be forever left open for the uses to which it was naturally destined, which said property from that period to the present time
196 has remained in that condition under the administration and at the expense of the city of New Orleans and of the second municipality thereof.

And whereas the said batture has, in the mean time, increased to

such a degree as to be no longer required in its full extent for the purposes contemplated by the parties to the said act;

And whereas, the council of the municipality number two did on the seventeenth day of June, eighteen hundred and forty-six, approve a plan drawn by George T. Dunbar, for laying out the new streets through the whole extent of said batture between New Levee street and the Mississippi River, extending from Montgomery's property down to Common street, and did propose to sell and dispose of the lots of ground as designated on the said plan;

And whereas the said batture is increasing every year in extent, and becoming less adapted to the object for which was intended by the act of the twentieth of September, 1820, and instead of being an accommodation to the public, and a convenience to commerce, retards business and increases the expenses of the merchants and of the community in general:

197 Now, therefore, the said appearers having agreed to alter its destination, moreover declared that they had agreed and stipulated, and do by these presents in their several capacities aforesaid agree and stipulate, as follows, to wit:

First. That three streets, to be named Fulton street, Front street, and Delta street, shall be laid out and opened through the said batture according to the plan drawn by said Dunbar and approved by the council, with this difference, viz, that Fulton street and Front street shall be each sixty feet wide, and lots formed to be numbered and to have such form and dimensions as set forth on the plan prepared by Joseph A. Beard, auctioneer, copies of which plans are deposited in this office for reference.

Second. That the lots composing the square or islets between the said three new streets shall be sold at public auction by Beard and May, auctioneers of this city, or by such other auctioneer as may be named by the council of municipality number two and the parties to this act, and it shall be made the duty of such auctioneer or auctioneers to draw up a formal process verbal of the sale of the said lots, and to sign the same, and to deposit a duplicate thereof with the under-

198 signed notary, and acts of sale of the said property shall be passed before the said notary and shall be signed by the finance committee of the said council and by the purchaser or purchasers, and acts of sale thus signed shall be binding upon all the said parties of the second part as vendors. That the said auction sales shall be made after advertisement in at least two newspapers published in New Orleans, and shall be continued from time to time until all the lots are sold. Thats the lots in the squares between New Levee and Fulton streets shall be sold in the winter of 1851 and 1852, unless the sale shall be postponed by consent. That the lots in the squares between Fulton and Front streets shall be sold in the winter of 1852 and 1853, unless the parties to this act shall consent and agree to some other time of sale, with the exception of the two squares bounded by Poydras, Fulton, and Girod streets and the river, which are not to be sold until in the opinion of the council of municipality No. two they can be improved without interfering with the space necessary for the convenience of commerce at that part of landing. That the lots in the squares between Front and Delta streets shall be brought into the market

199 and sold whenever the council of municipality No. two shall determine the same to be susceptible of private ownership and no longer necessary for the convenience of commerce. That the said lots shall be sold on the following terms and conditions, to wit: One

fifth of the price to be paid in cash, and the balance in equal instalments (divided into coupons if necessary) in one, two, three, and four years, with six per cent. interest from the day of sale, and eight per cent. per annum after due, the payment whereof shall be secured by special mortgage on the property sold.

Third. That immediately after the sale of the property aforesaid or of any portion thereof the proceeds, whether in cash or notes, or both, after deducting the necessary costs and expenses attending the sale alone, shall be divided and distributed in the manner following, to wit: One third shall be paid and delivered to the proper persons authorized by law to receive the same, to be applied to the payment of the old city debt or general sinking-fund of the city of New Orleans. One-third shall be paid and delivered to the original parties to the contract
200 of the twentieth of September, eighteen hundred and twenty, or the heirs and legal representatives thereof, whose assent is given to the present agreement, each one respectively to receive respectively in proportion to the front of the lots, or portions of grounds originally owed by him as shown by the said contract, and the remaining one-third of said proceeds shall be paid and delivered to the treasurer of the said municipality No. two for the exclusive use and benefit of the said municipality.

Fourth. And it is moreover well understood and agreed to, by, and between the said parties that the said one-third part of the proceeds aforesaid coming to the said parties of the second part shall be paid over to each of them, in the proportion hereinbefore set forth, by the undersigned notary as soon as practicable after the sales aforesaid; it being well understood also that in the said three grand divisions of the said proceeds the notes to be divided shall be so arranged as to be as nearly as possible equalized between the said three parties so far as the responsibility and standing of the several drawers thereof are concerned.

201 Fifth. That three squares or lots of ground between North Market and South Market streets, and designated on the plans as markets, shall belong to the municipality No. two, upon the condition that the said municipality shall erect thereon market-houses or other public buildings, or shall leave the same open as public squares, and shall in no event dispose of or sell the same as private property, and that all the portion of the batture between Delta street and the river Mississippi above Lafayette street, to the line of Montgomery's property, and all that portion of the batture between Front street and the river Mississippi, from Lafayette street down to Canal street, shall be and the same is hereby vested in perpetuity and full ownership in the said municipality No. two, in favor of whom appearers to this act hereby cede and relinquish forever all their claims in and to the said batture, as well as all and every enlargement thereof or accretion thereto by new formations.

And finally it is well understood and agreed to, by, and between the said contracting parties that this agreement or compromise is in no manner to change, alter, or prejudice the position or claims of any
202 kind or nature whatsoever which may now exist or which may hereafter arise among or between any of the said parties of the second part to any particular amount or portion of the said one-third of the proceeds of the sale of the property aforesaid.

Thus done and passed in my office, at the said city of New Orleans, in the presence of Auguste Commandeur and Charles Frederick Barry, witnesses of lawful age and domiciliated in this city, who hereunto sub-

scribe their names, together with the said parties and me, notary, on this thirtieth day of June, in the year of our Lord one thousand eight hundred and fifty-one.

(Original signed)

GEO. W. CHRISTY.
C. KOHN.
WM. FRERET.
JOHN FRERET.
A. COMMANDEUR.
CH'S FRED'K BARRY.
HENRY W. MCCALL.
E. TOLEDANO.
EUGÈNIE STEWART.
JAMES STEWART.

E. GRAITHE.
BEMODEY.

J. B. P. JOURDAIN.
LEONIDE BLONDEAN.
203 J. W. LAVILLEBEUVRE.
EUGÈNIE TOLEDANO,
Née Lavillebeuvre.
BEN. TOLEDANO.
J. P. BENJAMIN, *Att'y.*

A. BROTHER.
HENRY RENSHAW.
C. D. YANCY.
S. DUNCAN LINTON.
RANDELL HUNT.
JAS. P. FRERET.
M'L. MUSSON.
G. MUSSON.
HENRY R. DENIS.
F. MILLONDON,
As tutor of V. Rillieux.
A. BLONDEAN.
VICTOR J. FORSTALL,
Tuteur de la fille M. E. Forstall.
ASPASIE E. PETERS.
SAMUEL J. PETERS, JR.
E. J. LAVILLEBEUVRE.
Per pro VICTOR J. FORSTALL.
HENRY T. FORSTALL.
JULIEN CALVIS,
Assignee of Succ'r L. B. Macarty.

(Signed) H. B. CENAS,
Not. Pub.

STATE OF LOUISIANA,
City of New Orleans:

And again, to wit, on this twenty-fifth day of March, A. D. eighteen hundred and fifty-two, personally came and appeared Alexander Brother, Henry Renshaw, and Charles B. Yancy, members of the finance committee of the municipality No. two of this city, named in the foregoing act of compromise, and herein acting in their capacities as such, who declared that whereas doubts seem to have arisen as to the true construction of the provisions or clauses in the said foregoing act of compromise in relation to the division of the one-third of the proceeds of the sales of the batture forming the object of the said compromise, accrueing to the original donors or their legal representatives: They, the said appearers, therefore now declare that in their opinion it is the intention and true meaning of the said clauses or provisions that the said third of the said proceeds shall be divided among the said original donors, or their legal representatives, who have signed the said foregoing act of compromise, according to the extent of the
204 ground or front measurement thereof, to which the said donors, or their legal representatives, have preferred or set up claims, or pretentions, respectively; that is to say, that each of the original donors or proprietors shall receive one-third of the proceeds of the sale of the land in front of his former property, and that the entire proceeds of the sale are not to *to* constitute one common fund among all the donors.

Thus done and passed in the presence of the undersigned notary &

witnesses, who hereunto subscribe their names, together with the said appearers, on the day, month, and year above written.

(Original signed) CH'S FRED'K BARRY.
A. COMMANDEUR.
RANDELL HUNT,
Att'y of Heirs of E. Livingston.
HENRY R. DENIS,
C. KOHN,
A. BROTHER,
HENRY RENSHAW,
C. D. YANCY,
Finance Committee of Municipality Number Two.

(Signed) H. B. CENAS,
Not. Pub.

I, the undersigned custodian of notarial records for the parish of Orleans, State of Louisiana, hereby certify the foregoing to be a true copy of an original act passed before H. B. Cenas, notary public, deceased, on the 30th of June, 1851; which act is now in my possession as custodian aforesaid.

New Orleans, February 5th, 1878.

[SEAL.] (Signed) J. F. COFFEY,
Custodian of Notarial Records.

205, 206 *Document* 18, *referred to in note of evidence.*

No. 595. 20 septembre 1820. Donation par les possesseurs de la batture en face du faubourg St. Marie, aux maire, aldermen et habitants de la ville de la N'elle Orléans.

En la ville de la Nouvelle Orléans, dans l'État de la Louisiane, le vingt de septembre mil huit cent vingt, et la quarante-cinquième année de l'Indépendance des États-Unis d'Amérique, par devant Hugues Lavergne, notaire public, dûment commissioné, dans et pour la ville et paroisse de la Nouvelle Orléans, y résidant, et en présence des témoins ci-après nommés et soussignés, sont personnellement comparus les sieurs Edward Livingston, Jean Gravier, Louis Barthélemi Macarty, Christophe Toledano, Vincent Rillieux, Toussaint Mossy, Elie Victor Jourdain; Manette St. Amand, femme de couleur, libre et majeure d'âge; Henry McCall, agissant tant en son nom qu'en celui de Joseph J. Winter, son associé; Étienne Mazureau, fondé de pouvoirs d'Alexandre Labranche, pouvoir dont il nous a justifié; l'honorable James Pitot, agissant pour et au nom de dame Jeanne Bordier, épouse du sieur Jean Mathieu Hélant Petit, et de Bertrand Gravier, jeune, et de demoiselle Jeanne Gravier, fille majeure, tous résidans en France, en vertu des procurations et supplément de procurations que la dite dame Petit
207 avait adressée au sieur Nicolas Adolphe Desmare par acte au rapport de Deschamps et son confrère, notaires à Bordeaux, sous la date des seize juillet mil huit cent dix-sept et vingt-cinq septembre mil huit cent dix-huit, et de celle que le dit sieur Bertrand Gravier, jeune, et demoiselle Jeanne Gravier aurait adressée à l'honorable Pierre Derbigny par acte au rapport de Bagnaire et son confrère, notaries à Bergerac, le dix-huit juin mil huit cent dix-sept, toutes lesquelles procurations sont déposées en l'étude de Michel de Armas, notaire public en cette ville, et ont été substituées au dit sieur James Pitot par les dits sieurs Desmares et Derbigny par acte en date des cinq et dix

juin derniers, déposé au même lieu; Barthélemi Lafon, au nom et comme exécuteur testamentaire de feu Pierre de la Bigarre; et le sieur John W. Oddie, fondé de la procuration générale et spéciale de Margaret, veuve de feu Pierre de la Bigarre, de Maria Louisa de la Bigarre, veuve de P. Hewart, et de demoiselle Amarylis Laura de la Bigarre, tous lesquels comparants demeurent à la Nouvelle Orléans, d'une part;

et l'honorable Joseph Rouffignac, maire de la ville de la Nou-
208 velle Orléans, y demeurant, agissant et stipulant pour et au nom des maire, aldermen et habitants de la Nouvelle Orléans, en vertu de la délibération du conseil de ville sous la date du trente et un août dernier, dont expédition en bonne forme est ci-annexé; lesquels premiers comparans, soit en leurs noms personels que dans les qualités qu'ils précédent, et comme possesseurs actuels de la batture en face du faubourg St. Marie, ou les représentant, voulant favoriser le public dans l'usage du bord du fleuve qui se trouve en face de la dite batture, et faciliter la communication des rues qui doivent y aboutir, ils ont, par les présentes, fait donation, entre vifs et irrévocable, et en la meilleure forme que donation puisse valoir, aux maire, aldermen et habitants de la Nouvelle Orléans, représentés par l'honorable Joseph Rouffignac, maire de la de dite ville, ici présent, et acceptant et stipulant pour les dits maire, aldermen et habitants, en vertu de l'autorisation à lui donnée à cet effet par le conseil de ville dans la délibération du trente et un août dernier, dont copie en bonne forme est ci-annexée, tous les droits que les dits donateurs ont ou peuvent avoir, chacun en ce qui le concerne:

1°. Dans toute cette partie de la dite batture ou alluvion qui
209 existe à partir de la borne inférieure de la propriété de Mr. William W. Montgomery, et à venir en descendant jusqu'à la borne entre la ville et le faubourg Ste. Marie, et à prendre depuis le pieds de la levée neuve, à son extérieur jusqu'à la ligne marginal des eaux du fleuve, lorsqu'elles sont les plus basses.

2°. Dans la levée neuve qui a été construite sur toute l'étendue de la dite portion de la batture, ainsi que le sol sur lequel elle est assise, telle que la dite levée se trouvera lorsqu'elle aura été réparée, augmentée et garnie en bois dans toute son étendue par les dits donateurs, ainsi qu'il est ci-après convenu.

3°. Dans le sol nécessaire *nécessaire* pour le prolongement des rues du dit faubourg jusqu'à la levée neuve, lesquelles seront ouvertes et remblayées, et accompagnées de plates-formes et de rampes sur le fleuve, aux frais des dits donateurs, ainsi qu'il sera préscrit dans la suite de cet acte.

4°. Dans le sol de la rue des Tchapitoulas dans toute l'étendue du dit faubourg, en lui donnant soixante pieds de largeur, en y compris les trotoirs ou banquettes; tous lesquels terrains ainsi donnés ne sont sujets à aucunes hypothèques de la part des dits donateurs, ainsi qu'il résulte du certificat du conservateur de cette ville sous la
210 date de ce jour, à l'exception des suivantes, savoir:

Trente-deux mille huit cent quatre-vingt-neuf piastres d'hypothèques données par Mr. Edward Livingston de la manière suivante, savoir: Douze mille huit cent vingt-deux piastres, en faveur de James Johnston, sur le terrain numéro deux figuré au plan ci-annexé, certifié par Mr. Livingston et paraphé "ne varietur" par le notaire soussigné; quatorze mille trois cents piastres, en faveur de Messrs. Vincent Nolte et Laurent Millaudon, sur les trois faisant encoignure des rues Notre Dame et de la levée nouvelle, figurés au dit plan sous les numéros dix-huit, dix-neuf et vingt; trois mille cinq cents piastres, en faveur de Jo-

seph Fegura, sur le lot de terre numéro onze; deux mille deux cent soixante-neuf piastres, en faveur de James Ramsay, sur le terrain numéro treize au dit plan, tous lesquels terrains n'empiètent en aucune manière par les terrains et prolongamens des rues qui font l'objet de la présente donation, ainsi qu'il appert du susdit plan.

De plus, neuf cent quatre-vingt-cinq piastres soixante-huit cents et trois quarts d'hypothèques judiciaires contre le sieur Gravier, resultants de divers jugemens rendus en faveur des personnes suivantes,
211 savoir: Jno. Boissier, pour quatre cent soixante et quatorze piastres six cents et un quart, et les intérêts; et Joseph Taboné, pour les sommes de deux cent quarante-cinq piastres quatre-vingt-un cents et un quart, et deux cent soixante-cinq piastres quatre-vingt-un cents un quart, et les intérêts.

De plus, deux mille soixante-sept piastres d'hypothèques tacites contre John Linton, pour cautionnement donné à la cour des preuves pour Stephen Duncan, curateur à la succession d'Hamilton Blackony.

Et, enfin, cinquante mille piastres d'hypothèques donnés par Pierre de la Bigarre à Jean Gravier, pour sureté de la vente de la terre.

La presente donation est faite à la condition expresse, sans laquelle la dite donation n'aurait pas eu lieu, savoir: Que tous les terrains qui font l'objet de la présente donation resteront inalienables et insaisissables, pour dettes ou autrement, entre les mains de la corporation de la Nouvelle Orléans, qui ne pourra jamais, et sous aucun prétexte (ainsi que les dits maire, aldermen et habitants de la Nouvelle Orléans, représentés qu'ils sont, s'y obligent expressément par les présentes), les
212 vendre, échanger, donner ou en disposer autrement, en tout ou en partie, d'aucune manière quelconque, ni les employer à d'autres usages que ceux auxquels ils sont naturellement destinés, ni même y faire aucune constructions ou batisses, sauf néamoins le seul cas où le conseil de ville jugerait convenables à l'intérêt général d'autoriser l'établissement d'une pompe à feu sur telle portion de la batture ainsi donnée que le dit conseil croirait devoir choisir à cet effet. Il est convenu, cependent, que cette restriction de faire des batisses ou constructions de la part de la corporation ne pourra être interpretée de manière à empêcher le maire et le conseil de ville de la Nouvelle Orléans d'établir ou de faire établir des jettées ou "warf" pour la facilité du commerce, lorsque les dits maire et conseil de ville le jugeront convenable.

Et en considération de la présente donation, et des avantages qui pourront en résulter pour toutes les parties, les dits donateurs déclarent s'obliger conjointement par les présentes, envers les dits donataires, et ce accepté par eux, a faire réparer ou augmenter la nouvelle levée ainsi donnée, dans toute son étendue, de manière à ce qu'elle ait soixante pieds de crête; laquelle levée devra être confectionnée et parachevée dans la direction des lignes coloriées en jaune sur le plan
213 ci-annexé, et désignées par les lettres A, B, C, D, lequel plan sera paraphé "ne varietur;" et la dite levée devra être revêtue en bois de cypre de la même manière que l'est la partie de la levée qui se trouve en face de la ville, entre les rues Conti et Bienville; et les dits donateurs s'obligent, de plus, en ce qui les concerne envers les dits donataires, ce accepté par eux, à ouvrir et exhausser à leurs frais toutes les rues des dit faubourg Ste. Marie qu'il s'agit de prolonger depuis la rue des Chapitoulas jusqu'à la levée neuve ainsi donnée, et de faire à l'extrémité de chacune des dites rues ainsi prolongées, et en dehors de la levée, une plate-forme ayant douze pieds de longeur et une largeur égale à celle de la rue ainsi prolongée, avec une rampe en

pente douce de chaque côté. Et les dits donateurs s'obligent par les présentes à commencer immédiatement tous les dits travaux à partir de la date du présent acte, et ce de la manière survante, savoir: Les travaux de la réparation, augmentation et revêtement de la levée susmentionnée, tels qu'ils sont décrits ci-dessus, à partir de la borne inférieure du faubourg Ste. Marie, en remontant, en sorte qu'ils soient continués sans interruption tant que la crue du fleuve n'y met-
214 tra pas d'obstacle, et qu'ils soient parachevés dans le terme de deux années à partir de la date du présent acte; et les travaux nécessaires pour le prolongement et le "remblai" des rues du dit faubourg, à partir de la rue des Chapitoulas jusqu'à la levée neuve, en sorte qu'ils soient parachevés et que les dits prolongements des rues soient practicables pour les voitures et charettes, au plus tard, pour le premier janvier mil huit cent vingt et un. Il est convenu entre toutes les parties que tous les travaux ci-dessus décrits s'exécuteront sous la direction et approbation du voyer de la ville, et que faute par les dits donateurs de commencer les dits travaux dans la quinzaine de la date du présent acte le maire et le conseil de ville auront le droit de faire faire les dits travaux aux frais et dépens des dits donateurs, et de la manière que les dits maire et conseil de ville le jugeront convenable, et qu'en outre ils pourront faire saisir et vendre les terrains des dits donateurs ci-après affectés et hypothéqués pour le paiement des dits travaux; il est de plus convenu que jusqu'à ce que les rues susdites soient remblayées et exhaussées convenablement, et jusqu'à ce que les travaux de la levée soient parachevés, le conseil de ville donnera ses ordres pour interdire au public de prendre de la terre sur
215 aucune partie de la batture ainsi donnée, excepté dans l'espace contenu entre une ligne correspondante au prolongement de la rue Girod et la borne de la propriété de Mr. William W. Montgomery, et pour que le voyer de la ville veille à ce que la dite terre soit enlevée par couches égales; et il est enfin convenu qu'aussitôt après le parachèvement des dits travaux, et la réception d'iceux par le voyer de la ville, l'entretien et la réparation de la levée, des rues, plates-formes et rampes ci-dessus mentionnées seront à la charge des maire, aldermen et habitants de la Nouvelle Orléans.

Et toujours, en considération de la présente donation, et des avantages qui peuvent en résulter pour toutes les parties, les dits donateurs s'obligent par les présentes à détruire ou faire détruire, à leurs frais et dépens, dans le terme d'un mois à partir de la date du présent acte, toutes les batisses ou autres constructions en bois qui existent actuellement sur la batture du faubourg Ste. Marie, et d'en faire emporter tous les matériaux; comme aussi ils s'interdisent par les présentes, tant pour eux-mêmes que pour leurs héritiers ou ayans-causes, de pouvoir élever aucunes maisons ou édifices sur la dite batture qu'autant que les murs d'iceux seront en briques ou en pierres et qu'ils
216 seront couverts en tuiles ou autres matières incombustibles, à peine en cas de constravention à la présente clause de voir les dits maisons et édifices qui seraient construits différemment détruits à leurs frais et dépens. Et les dits maire, aldermen et habitants de la Nouvelle Orléans, représentés comme il est dit ci-dessus, s'engagent par les présentes à faire construire une halle pour servir de marché public, laquelle sera placée dans le faubourg Ste. Marie, et ce pour et en considération d'une somme de trois cents piastres que les dits donateurs s'obligent par les présents de payer à la corporation de la Nouvelle Orléans par chaque terrain de trente pieds de face à la levée neuve qu'ils possédent sur la batture du faubourg Ste. Marie,

sans égard pour la profondeur des dits terrains, et ce en leurs billets respectifs à l'ordre du maire de la Nouvelle Orléans, à un et deux ans de terme, à compter de la date du présent acte, en fournissant chacun en ce qui le concerne une hypothèque spéciale sur les terrains qui leur appartiennent respectivement sur la dite batture, et ce pour sureté du paiement des susdits billets à leur échéance; et dans le cas où la somme qui proviendra des dits paiement serait plus que suffi-
217 sante pour faire face aux frais de construction de la dite halle, les maire, aldermen et habitants de la Nouvelle Orléans, représentés comme il est dit ci-dessus, s'obligent par les présentes à employer cet excédant à subvenir aux frais de construction d'une autre halle pour servir de marché, laquelle sera placé au faubourg Marigny.

Et en exécution des présentes conventions les dits donateurs ont immédiatement fourni et délivré, en présence de nous, notaire, et des témoins soussignés, à l'honorable Joseph Rouffigner, qui le reconnaît, leurs billets respectifs, au date de ce jour, et à l'ordre du dit Joseph Rouffignac, maire de la Nouvelle Orléans, pour les terrains qu'ils possédent respectivement sur la batture du faubourg Ste. Marie, conformément au place ci-annexé, tous lesquels billets ont été paraphés "ne varietur" pour constater leur rapport avec le présent acte, et ont été fournis de la manière suivante, savior:

Deux billets souscrits par le sieur Edward Livingston, sous la date et ordre que dessus, l'un de la somme de cinq mille quatre cent quatre-vingt-trois piastres trente-trois cents et un tiers, payable à un an de date, et l'autre de pareille somme de cinq mille quatre cent quatre-vingt-
trois piastres trente-trois cents et un tiers, payable à deux ans de
218 date, faisant ensemble celle de dix mille neuf cent soixante-six piastres soixante-six cents deux tiers: deux billets souscrits par le sieur Jean Gravier, même ordre et date, l'un de la somme de douze cent quarante piastres, payable à un an de date, et l'autre de pareille somme de douze cent quarante piastres, payable à deux ans de date, faisant ensemble celle de deux mille quatre cent quatre-vingt piastres; deux billets souscrits par Louis Barthélemy Macarty, même date et ordre, l'un de la somme de cent cinquante-cinq piastres, payable à un an de date, et l'autre de pareille somme de cent cinquante-cinq piastres, payable à deux ans de date, faisant ensemble trois cent dix piastres; deux billets souscrits par le sieur Christophe Toledano, même date et ordre, l'un de la somme de cent treize piastres soixante et quinze cents, payable à un an de date, et l'autre de pareille somme de cent treize piastres soixante et quinze cents, payable à deux ans de date, fesant ensemble celle de deux cent vingt-sept piastres cinquante cents; deux billets souscrits par le sieur Vincent Rillieux, même date et ordre, l'un de la somme de deux cent soixante et douze piastres quatre-vingt-onze cents deux tiers, payable à un an de date, et l'autre de pareille somme de
deux cent soixante et douze piastres quatre-vingt-onze cents
219 deux tiers, payable à deux ans de date, faisant ensemble celle de cinq cent quarante-cinq piastres quatre-vingt-trois cents un tiers; deux billets souscrits par le sieur Toussaint Mossy, même date et ordre, l'un de la somme de cent trente-six piastres vingt-cinq cents, payable à un an de date, et l'autre de pareille somme de cent trente-six piastres vingt-cinq cents, payable à deux ans, fesant ensemble celle de deux cent soixante-douze piastres cinquante cents; deux billets souscrits par le sieur Elie Victor Jourdain, même date et ordre, l'un de la somme de cent quatre-vingt-une piastres vingt-cinq cents, payable à un an de date, et l'autre de pareille somme de cent quatre-vingt-une piastres vingt-cinq cents, payable à deux ans de date, faisant ensemble

celle de trois cent soixante-deux piastres cinquante cents; deux billets souscrits par Messieurs Winter & McCall et Linton & Wilkins, même date et ordre, l'un de la somme de deux cent soixante et douze piastres quatre-vingt-onze cents deux tiers, payable à un an de date, et l'autre de pareille somme de deux cent soixante et douze piastres quatre-vingt-onze cents deux tiers, payable à deux ans de date, fesant ensemble celle de cinq cent quarante-cinq piastres quatre-vingt-trois cents un tiers;

220 deux billets souscrits par le sieur Alexandre Labranche, même date et ordre, l'un de la somme de deux cent soixante et douze piastres quatre-vingt-onze cents deux tiers, payable à un an de date, et l'autre de pareille somme de deux cent soixante et douze piastres quatre-vingt-onze cents deux tiers, payable à deux ans de date, faisant ensemble celle de cinq cent quarante-cinq piastres quatre-vingt-trois cents un tiers; deux billets souscrits par le sieur James Pitot, au nom et comme fondé de la procuration de Jeanne Bordier, femme Petit, de Bertrand Gravier, jeune, et de Jeanne Gravier, même date et ordre, l'un de la somme de quatre mille huit cent quarante-huit piastres soixante-quinze cents, payable à un an de date, et l'autre de pareille somme de quatre mille huit cent quarante-huit piastres soixante-quinze cents, payable à deux ans de date, fesant ensemble celle de neuf mille six cent quatre-vingt-dix-sept piastres cinquante cents; deux billets souscrits par Barthélemy Lafon, au nom et comme exécuteur testamentaire de feu Pierre de la Bigarre, même date et ordre, l'un de la somme de quatre cent soixante et dix piastres, payable à un an de date, et l'autre de pareille somme de quatre cent soixante et dix piastres, payable à deux ans de date, faisant ensemble celle de neuf cent quarante piastres; de tous lesquels billets l'honorable Joseph

221 Rouffignac, et qualité, donne décharge aux sieurs donateurs payés qu'ils soient à leurs échéances. Et quand à la dite Manette St. Amand, femme de couleur libre, comparante et donatrice au présent acte, elle a préféré pour se dispenser de fournis ses deux billets de cent cinquante-cinq piastres chaque, à un et deux ans de terme, ainsi que dessus, et éviter de donner une hypothèque spéciale sur le terrain numéro douze au plan ci-annexé, de trente et un pieds de face, sur la profondeur figurée au dit plan, qu'elle posséde sur la dite batture, de payer immédiatement sa quote part, s'élevant à trois cent dix piastres, entre les mains de l'honorable Joseph Rouffignac, et qualité, qui reconnait avoir reçu la dite somme de trois cent dix piastres pour les deux billets de cent cinquante-cinq piastres chaque, à un et deux ans de date, que la dite Manette St. Amand aurait autrement eu à fournir, déclarant le dit sieur Joseph Rouffignac donner par les présentes à la dite Manette St. Amand bonne et valable quittance et décharge de sa dite quote part de trois cent dix piastres.

Et pour sureté du paiement des dits billets à leurs échéances respectives, les dits sieurs donateurs déclarent donner, chacun en droit soi et

222 en ce qui le concerne, hypothèque spéciale au maire, aldermen et habitants de la Nouvelle Orléans sur les terrains suivant, savior:

Le sieur Edward Livingston a hypothéqué ainsi que dessus:

1°. Le terrain numéro un au plan ci-annexé, de cent quarante-deux pieds huit pouces de face sur la profondeur figurée au dit plan;

2°. Le terrain numéro vingt au dit plan, ayant deux cent dix pieds de face sur la profondeur comme il est dit ci-dessus;

3°. Le terrain numéro vingt et un au dit plan, ayant deux cent quarante-deux pieds de face sur la profondeur ainsi qu'il a été dit;

4°. Le terrain numéro vingt-deux au susdit plan, ayant deux cent vingt pieds de face sur la profondeur comme il a été dit;

5°. Les trois quarts du terrain numéro vingt-quatre au dit plan, qu'il posséde par indivis avec les héritiers De la Bigarre, le dit terrain ayant trois cent trente-deux pieds de face sur la profondeur telle qu'elle a été sus-énoncée; et

6°. Enfin, les trois quarts du terrain numéro vingt-cinq du dit plan, qu'il posséde aussi par indivis avec les même héritiers, lequel terrain a quarante-quatre pieds de face sur la profondeur comme il est dit ci-dessus; le tout pour sureté de paiement de la somme de dix mille neuf cent soixante-six piastres soixante-six cents deux tiers, montant
223 des billets ci-dessus par lui souscrits comme il a été dit.

Le sieur Jean Gravier a hypothéqué de la même manière le quart du terrain numéro vingt-trois figuré au susdit plan, qu'il posséde par indivis avec les héritiers Gravier, le dit terrain ayant quatre cent quatre-vingt-seize pieds de face sur une profondeur telle qu'elle est figurée sur le dit plan, et ce pour sureté du paiement de la somme de douze cent quarante piastres, montant des billets par lui souscrits comme il est dit ci-dessus; le sieur Louis Barthélemy Macarty a hypothéqué de la même manière le terrain numéro seize au dit plan, ayant trente et un pieds de face sur la profondeur figurée au dit plan, et ce pour sureté de la somme de trois cent dix piastres, montant des billets souscrits par lui comme il est dit ci-dessus; le sieur Christophe Toledano a hypothéqué comme ci-dessus le terrain numéro dix-huit au dit plan, ayant, le dit terrain, vingt-deux pieds neuf pouces de face sur la profondeur figurée au dit plan, et ce pour sureté du paiement de deux cent vingt-sept piastres cinquante cents, montant des deux billets par lui souscrits comme ci-dessus: le sieur Vincent Rillieux a hypothéqué de même le terrain numéro dix du dit plan, ayant, le dit terrain, cinquante-
224 quatre pieds sept pouces de face sur la profondeur figurée au dit plan, pour sureté du paiement des cinq cent quarante-cinq piastres quatre-vingt-trois cents et un tiers de billets par lui souscrits comme dessus; le sieur Toussaint Mossy a hypothéqué de la même manière le terrain numéro neuf du dit plan, mesurant vingt-sept pieds trois pouces de face, profondeur figurée au plan, pour sureté du paiement de deux cent soixante-douze piastres cinquante cents de billets souscrits par lui comme ci-dessus: le sieur Elie Victor Jourdain a hypothéqué de la même manière le terrain numéro quatorze du dit plan, mesurant trente-six pieds trois pouces de face sur la profondeur figurée au plan, pour sureté du paiement des trois cent soixante-douze piastres cinquante cents de billets souscrits par lui comme dessus; les sieurs McCall & Linton, au nom de leur société de Winter & McCall, et de Wilkins & Linton, ont hypothéqué le terrain numéro six du dit plan, mesurant cinquante-quatre pieds sept pouces de face, profondeur figurée au plan, pour sureté du paiement des cinq cent quarante-cinq piastres quatre-vingt-trois cents un tiers de billets par eux souscrits comme dessus; le sieur Etienne Mazureau, fondé de pouvoirs
225 du sieur Alexandre Labranche, a hypothéqué de la même manière le terrain numéro cinq au dit plan, mesurant cinquante-quatre pieds sept pouces de face sur la profondeur figurée au dit plan, pour sureté du paiement des cinq cent quarante-cinq piastres quatre-vingt-trois cents un tiers de billets souscrits par le sieur Alexandre Labranche ainsi qu'il a été dit; le sieur James Pitot, et qualité, a hypothéqué de la même manière les terrains numéros deux, quatre, six, huit, onze, treize, quinze, dix-sept, dix-neuf, et les trois quarts du terrain numéro vingt-trois au dit plan, mesurant ensemble huit cent

quarante-cinq pieds neuf pouces sur la profondeur figurée au dit plan, pour surete du paiement de neuf mille six cents quatre-vingt-dix-sept piastres cinquante cents de billets par lui souscrits en sa dite qualité comme il est dit ci-dessus; et le dit sieur Barthélemy Lafon, et qualité, a hypothéqué de la même manière le quart des terrains numéros vingt-quatre et vingt-cinq au dit plan, possédés par indivis par les héritiers De la Bigarre et Mr. Livingston, ayant ensemble, les dites portions de terrains, quatre-vingt-quatorze pieds de face sur la profondeur figurée au plan susdit, et ce pour sureté du paiement de neuf cent quarante piastres souscrits par le dit sieur Lafon en sa qualité comme il a été dit.

226 Et pour l'inscription des présentes hypothèques, et pour l'insinuation de la donation contenu au présent acte, tous pouvoirs nécessaires sont donnés au porteur d'une expédition des présentes.

Fait et passé en mon étude, les jour, mois et an que dessus, en présence des sieurs Jean Baptiste Desdunes, fils, et Jean B'te Donatieu Augustin, témoins requis et domiciliés, qui, ainsi que les comparans, ont signés avec nous, notaire, après lecture faite. Cinquante-cinq mots rayés nuls, huit mots surchargés ou raturés bons, et cinq renvois et le mot "un" ecrits en marge bons, le tout approuvé avant signatures; cent onze mots rayés nuls, quatre-vingt mots surchargés bons, et quatre renvois approuvés, en addition aux précédens.

(Originale signé:)

EDW. LIVINGSTON.
E. MAZUREAU,
Pour Alex'dre Labranche.
JEAN GRAVIER.
VINCENT RILLIEUX.
C. TOLEDANO.
J. PITOT,
Fondé de Pouvoirs des Héritiers Gravier.
T. MOSSY.
L. B'Y MACARTY.
WINTER & MCCALL.
B. LAFON,
Executeur Testamentaire.
WILKINS & LINTON.
F. V. JOURDAIN.
MANETTE ST. AMAND.
J. B. DESDUNES, FILS.
J. B. D. AUGUSTIN.
J. ROUFFIGNAC, *Maire.*

H. LAVERGNE,
Not. Pub.

227 The undersigned, custodian of notarial records for the parish of Orleans, State of Louisiana, hereby certify the foregoing to be a true copy of the original, passed before H. Lavergne, a notary public, deceased, of this city, dated the 20th September, 1820, which is now in my possession as custodian aforesaid.

New Orleans, February 5th, 1878.

[L. S.] (Signed) J. S. COFFEY,
Custodian of Notarial Records.

(Endorsed:) No. 595. 20 septembre 1820 "Donation par les possesseurs de la batture en face du faubourg Ste. Marie aux maire, aldermen et habitants de la ville de la Nouvelle Orléans." (Signed) J. F. Coffey, custodian of not. records. No. 7972. U. S. circuit court, district of Louisiana. New Orleans, Mobile & Texas Railroad Company vs. City of New Orleans. Exhibit "A 2," offered in evidence by defendant February 13th, 1878. (Signed) F. A. Woolfley, comm'r U. S. circuit court, district of Louisiana. "18." Offered by def't May 27th, 1878. (Signed) K. Loew, d'y clerk.

228 TRANSLATION OF EXHIBIT A 2.

Translation of document 18, *referred to in note of evidence.*

No. 595. 20th September, 1820. Donation by the possessors of the batture in front of the faubourg St. Mary to the mayor, aldermen, and inhabitants of the city of New Orleans.

In the city of New Orleans, in the State of Louisiana, the 20th day of September, 1820, and the 45th year of the Independence of the United States of America, before Hugues Lavergne, a notary public duly commissioned in and for the city and parish of New Orleans, therein residing, and in presence of the witnesses hereinafter named and undersigned, personally appeared Messrs. Edward Livingston, John Gravier, Louis Bartholomew Macarty, Christopher Toledano, Vincent Rillieux, Toussaint Mossy, Eli Victor Jourdain; Manette St. Amand, a free women of color, of lawful age; Henry McCall, acting for himself and for Joseph S. Winter, his partner; Étienne Mazureau, the duly authorized attorney in fact of Alexander Labranche; Hon. James Pitot, acting for and in the name of Mad. Jeanne Bordier, wife of John Matthew Hélant Petit, of Bertrand Gravier, jr., and of Miss Jeanne Gravier, a lady of lawful age, all residing in France, by virtue of the pro-
229 curation and supplemental procuration which the said Mad. Petit had given to Mr. Nicholas Adolph Desmare by act before Deschamps and colleague, notaries at Bordeaux, under dates of July 16th, 1817, and September 25th, 1818, and of the one which the said Bertrand Gravier, jr., and Miss Jeanne Gravier had given to the Hon. Peter Derbigny by act passed before Bagnaire and colleague, notaries at Bergerac, June 18, 1817, all of which said procurations are deposited in the office of Michel de Armas, notary public in this city, and have been substituted to the said James Pitot by the said Desmare and Derbigny by act of dates 5th and 10th June last, and are deposited in the same office; Bartholomew Lafon, test'y executor of Peter de la Bigarre, deceased; and John W. Oddie, attorney in fact, general and special, of Margaret, widow of said Peter de la Bigarre, dec'd, of Maria Louisa de la Bigarre, widow of P. Hewart, and of Miss Amarylis Laura de la Bigarre, all of which said appearers residing in the city of New Orleans, on the one part; and the Hon. Joseph Rouffignac, mayor of the city of New Orleans, therein residing, acting and stipulating for and in behalf of the mayor, aldermen, and inhabitants of New Orleans, by virtue of the resolution of the city council of 31st August last, a copy whereof in due form is hereto annexed.

230 The said appearers of the first part, as well in their own personal names as in their respective capacities, and as actual possessors of the batture in front of the faubourg St. Mary, or representing them, wishing to favor the public in the use of the river bank which lies in front of said batture, and to facilitate the communication of the streets which shall open thereon, do by these presents make donation inter vivos and irrevocable, and in the best form a donation can be made, to the mayor, aldermen, and inhabitants of New Orleans, represented by the honorable Joseph Rouffignac, mayor of said city, here present, accepting and stipulating for the said mayor, aldermen, and inhabitants, by virtue of the authority vested in him by the resolution of the city council of 31st August last, a copy whereof in due form is hereto annexed, all the rights which the said donors have or can have, each so far as he is concerned.

1°. In all that portion of the said batture or alluvion which exists from the lower limit of the property of William W. Montgomery and running down to the boundary line between the city and the faubourg St. Mary, and then from the foot of the new levee from its outer side to the marginal line of the waters of the river when they are at their lowest stage.

231 2°. In the new levee which has been constructed on the whole extent of the said portion of batture, as well as the land upon which it rests, just as the said levee shall be when it shall have been repaired, enlarged, and provided with a wooden revetment in its whole extent by the said donors, as it is hereinafter agreed.

3°. In the land necessary for the extension of the streets of said faubourg to the new levee, which shall be opened, filled up, and provided with platforms and railings on the river at the expense of the donors, as it shall be hereafter prescribed in said act.

4°. In the land of Tchoupitoulas street in the whole extent of said faubourg, giving it a width of 60 feet, including the sidewalks. All of which lots so donated are not subject to any mortgages on the part of the said donors, as it appears from the certificate of the recorder of this city of this date, with the exception of the following, that is to say, mortgages to the amount of thirty-two thousand eight hundred and twenty-nine dollars granted by Edward Livingston in the manner following, viz:

$12,822 in favor of James Johnston on lot No. 2 figured on plan hereto annexed, certified by Mr. Livingston and paraphed "ne varietur" by the undersigned notary; $14,300 in favor of Messrs. Vincent

232 Nolte and Laurent Millaudon on the three lots forming the corner of Notre Dame and the new levee described on said plan as Nos. 18, 19, and 20; $3,500 in favor of Joseph Fegura on the lot of ground No. 11; $2,269 in favor of James Ramsay on lot No. 13 on said plan; all of which lots do not in any manner encroach on the lots of ground and extensions of streets which are the object of the present donation, as it appears by said plan.

Further, $985.68¾ judicial mortgages against Mr. Gravier resulting from divers judgments rendered in favor of the following parties, to wit: John Borssier for $474.6¼ and interests, & Joseph Taboné for the sums of $255.81¼ and $265.81¼ and interests.

Further, $2,067 of tacit mortgages against John Linton as surety on the bond given by Stephen Duncan in the probate court as curator of the succession of Hamilton Blakony.

And, finally, $50,000 mortgages granted by Pierre de la Bigarre to John Gravier as security for the sale of the batture.

The present donation is made with the express condition, without which said donation would never have been made, namely:

That all the lots of ground which are the object of the present

233 donation shall remain unalienable, and not subject to seizure for debts or otherwise, in the hands of the corporation of the city of New Orleans, and said corporation shall never, and under no pretext whatsoever (to which clause the said mayor, aldermen, and inhabitants of New Orleans, represented as they are, expressly obligate themselves by these presents), sell, exchange, give away, or otherwise dispose of, in whole or in part, in any manner whatever, nor appropriate to other public uses, the said lots of ground, than to that to which they are naturally destined, nor even erect thereon any constructions or buildings, except it would be in the sole and only case where the city council should deem it beneficial to the public interest to authorize the

erection of a fire-engine upon such portion of the batture so donated as said council should designate; it is, however, understood that the restriction to erect buildings or constructions on the parts of the corporation shall not be so construed as to prevent the mayor and city council of New Orleans from establishing or causing to be established jetties or wharf to facilitate commerce should said mayor and city council deem it advisable.

And in consideration of the present donation, and of the advantages that may result for all the parties, the said donors declare and
234 bind themselves jointly by presents, to the said donees, who hereby accept, to repair or enlarge the new levee so donated, on its whole extent, so that it shall be sixty feet at the top, which said levee shall be constructed and completed as designated by the yellow lines on the plan hereto annexed, and designated by the letters A, B, C, D, which plan shall be paraphed "ne varietur," and the said levee shall be lined with cypress wood in the same manner as the levee which is in front of the city between Conti and Bienville streets; and the said donors bind themselves, moreover, in what concerns them towards the said donees, who accept the same, to open and raise at their expense all the streets of said faubourg St. Mary which are to be extended from Chopitoulas street to the new levee so donated, and to erect at the extremity of each of the streets so extended, and outside the levee, a platform 12 feet long and of equal width with the street so extended, with a rail or brea'twork slanting gently on each side.

And the said donors bind themselves by these presents to commence all of said works immediately upon the passage of the present act, which shall be done in following manner, to wit:

235 The works for the reparation, increase, and revetment of the levee above mentioned, in the manner in which they are recited above, beginning at the lower limit of the faubourg St. Mary and proceeding upwards, so that they shall be continued without interruption as long as the rise of the river shall not prevent it, and that the said works shall be completed within the space of two years from the date of the present act, and the necessary works for the prolongation and filling up of the streets of said faubourg from Tchoupitoulas street to the new levee, so that the same shall be completed, and that the said extensions of streets shall be practicable for carriages and carts on 1st January, 1821.

It is understood between all the parties that all of the above-recited works shall be executed under the direction and approval of the city surveyor; and in default of the donors failing to begin said works within fifteen days from the date of this act the mayor and city council shall have the right to cause said works to be done at the expense of the said donors, and in the manner said mayor and council shall deem fit; and furthermore they may seize and sell the lots of the said donors hereinafter affected and hypothecated for the payment of
236 said works; and it is further agreed that until the above-described streets shall have been sufficiently filled up and graded, and until the works of the levee are completely done, the city council shall give its orders to forbid the public from removing any earth from any portion of the batture so donated except upon the space embraced between a line corresponding with the extension of Girod street to the limit of the property of W. W. Montgomery, and the city surveyor is to see that the said earth be removed in equal

lumps; and, lastly, it is agreed that as soon as said works shall have been completed and accepted by the city surveyor, the maintenance and reparation of the levee, streets, platforms, and rails or breast-works above recited shall be at the charge of the mayor, aldermen, and inhabitants of New Orleans.

And always, in consideration of the present donation and the advantages that may result therefrom to all parties, the said donors hereby bind themselves to demolish or cause to be demolished, at their costs and expenses, within one month from the date of this act, all wooden buildings or wooden constructions now existing upon the batture of faubourg St. Mary, and to cause all materials to be removed therefrom. They also bind themselves, their heirs and assigns, not
237 to erect any houses or buildings upon said batture unless the walls thereof be of brick or stone, or roofed with tiles or other incombustible material. Any houses or buildings erected in contravention of this clause would be demolished at their cost and expense.

And the said mayor, aldermen, and inhabitants of New Orleans, represented as above set forth, bind themselves hereby to have constructed a public market (halle), which shall be placed in faubourg St. Mary, for and in consideration of the sum of three hundred dollars, to be paid by said donors to the corporation of New Orleans, for each and every lot of 30 feet front on the new levee which they possess in the batture of faubourg St. Mary, no matter what the depths of said lots may be; this payment to be made by giving their respective notes to the order of the mayor of New Orleans, payable in one and two years from the date of this act, each giving a special mortgage upon the lots respectively owned by them upon the batture to secure payment of the notes due at maturity; and in case the sum produced by said notes should be more than sufficient to defray the expense for building said public market, the mayor, aldermen, and inhabitants of New Orleans, represented as above, bind themselves to employ the surplus
238 towards building another public market, which shall be placed in the faubourg Marigny.

And in execution of these present agreements, the said donors did forthwith, in presence of me, notary, and the undersigned witnesses, deliver to the Hon. Joseph Rouffignac, who acknowledges receipt thereof, their respective notes, dated this day, to the order of said Joseph Rouffignac, mayor of New Orleans, for the lots they respectively possess upon the batture of the faubourg St. Mary, agreeably with the annexed plan, all of which notes were paraphed "ne varietur" for identification with the present act, and were furnished in manner following, viz:

Two notes subscribed by Mr. Edward Livingston, under date and order as above, one for $5,483.33⅓, payable in one year, the other for a like sum of $5,483.33⅓, payable in two years, making together the sum of $10,966.66⅔.

Two notes drawn by Mr. Jean Gravier, like order and date, one for $1,240, due in one year, the other for like sum of $1,240, due in two years, making together $2,480.

Two notes drawn by Louis Barthélemy Macarty, like date and order, one for $155, due in one year, the other for like sum of $155, due in two years from date, making together the sum of $310.

239 Two notes drawn by Mr. Christophe Toledano, like order and date, one for $113.75, payable one year after date, the other for like sum of $113.75, payable two years after date, making together the sum of $227.50.

Two notes drawn by Vincent Rillieux, like order and date, one for $272.91⅔, due in one year, the other for like sum, $272.91⅔, due in two years after date, making together the sum of $545.83⅓.

Two notes drawn by Mr. Toussaint Mossy, same date and order, one for $136.25, due in one year, the other for like sum, $136.25, due in two years after date, making together the sum of $272.50.

Two notes drawn by Mr. Elie Victor Jourdain, same date and order, one for $181.25, due in one year, the other for like sum of $181.25, due in two years after date, making together $362.50.

Two notes drawn by Messrs. Winter and McCall and Linton and Wilkins, same date and order, one for $272.91⅔, due one year after date, the other for a like sum of $272.91⅔, due two years after date, making together $545.83⅓.

Two notes drawn by Alexander Labranche, same date and order, one for $272.91⅓, due in one year, the other for like sum, $272.91⅓, due in two years after date, making in the aggregate $543.83⅓.

240 Two notes drawn by Mr. James Pitot, as attorney in fact of Jeanne Bordier, wife of Petit, of Bertrand Gravier, jr., and of Jeanne Gravier, same date and order, one for $4,848.75, due in one year, the other for like sum of $4,848.75, due in two years after date, making together $9,697.50.

Two notes drawn by Barthélemy Lafon, in his capacity of testamentary executor of Pierre de la Bigarre, like date and order, one for $470, due one year after date, the other for like sum of $470, due two years after date, making together $940; of all which said notes the Hon. Joseph Rouffignac, in his official capacity, grants discharge to said donors, provided the said notes be paid at maturity. As regards the said Manette St. Amand, free woman of color, an appearer and donor to the present act, to dispense from signing two notes for $155 each, due in one and two years, and from giving a mortgage upon lot No. 12 on annexed plan, of 31 feet front upon a depth which figures on said plan, and which lot she owns on said batture, she preferred to pay forthwith her share, amounting to $310, to the Hon. Joseph Rouffignac, in his official capacity, who acknowledges to have received said sum of $310, in lieu of the two notes for $155 each, at one and two

241 years date, which said Manette St. Amand otherwise would have been compelled to furnish, and the said Joseph Rouffignac hereby grants to said Manette St. Amand a full acquittance and discharge therefor.

And in order to secure the payment of said notes at their respective maturities, the said donors declare, each for himself, to hypothecate specially to the mayor, aldermen, and inhabitants of New Orleans the following lots of ground, to wit:

Mr. Edward Livingston has hypothecated as follows: 1°. Lot No. 1 on annexed plan, having 142 feet 8 inches front by the depth as figured on said plan. 2°. Lot No. 20 of same plan, having 210 feet by the depth set forth above. 3°. Lot No. 21 of same plan, having 242 feet front on the depth as already stated. 4°. Lot No. 22 of same plan, having a front of 220 feet upon same recited depth. 5°. The three-fourths of lot No. 24 on same plan, which he owns undivided with the heirs of De la Bigarre, said lot having 332 feet front by the above-mentioned depth. 6°, and lastly. The ¾*ths* of lot No. 25 of same plan, which he also owns undivided with the same heirs, which lot has a front of 44 by the depth above described; the whole to secure the payment of the sum of $10,966.66⅔, amount of notes subscribed by him as above set forth.

Mr. Jean Gravier has hypothecated in the same manner one-

242 fourth of lot No. 23 on same plan, which he owns undivided with the heirs of Gravier, said lot having a front of 496 feet by a depth as shown by said plan, to secure the payment of $1,240, amount of his notes drawn as above stated.

Mr. Louis Barthélemy Macarty has hypothecated in the same manner lot No. 16 of said plan, having a front of 31 feet by the depth described in said plan, to secure the payment of $310, amount of his notes as above stated.

Mr. Christophe Toledano has hypothecated in same manner lot No. 18 of said plan, having a front of 22 feet 9 inches by the depth indicated on said plan, to secure the payment of $227.50, amount of his notes as above stated.

Mr. Vincent Rillieux has hypothecated in same manner lot No. 10 of same plan, having a front of 54 feet 7 inches by the depth indicated on said plan, to secure payment of $545.83⅓, amount notes subscribed by him as above.

Mr. Toussaint Mossy has hypothecated in the same manner lot No. 9 of said plan, having a front of 27 feet 3 inches by the depth set forth in said plan, to secure the payment of $272.50, amount of notes by him subscribed as above.

Mr. Elie Victor Jourdain has hypothecated in the same manner lot No. 14 of said plan, having 36 feet 3 inches front by the depth set forth on the plan, to secure $362.50, amount of the notes subscribed by him as above recited.

243 Messrs. McCall and Linton, on behalf of their firm of Winter & McCall and of Wilkins & Linton, have hypothecated lot No. 6 of said plan, having 54 feet 7 inches front and depth as figured on said plan, to secure $545.83⅓, being one-third of their notes subscribed as above set forth.

Mr. Étienne Mazureau, as attorney in fact of Alexander Labranche, has hypothecated in same manner lot No. 5 on said plan, having 54 feet 7 inches front by the depth specified by said plan, to secure $545.83⅓, amount of notes subscribed by said Alexander Labranche as above stated.

Mr. James Pitot, in his capacity aforesaid, has hypothecated in like manner lots No. 2, 4, 6, 8, 11, 13, 15, 17, 19, and ¾*ths* of lot No. 23 of said plan, having together a front of 845 feet 9 inches by the depth figuring on said plan, to secure the payment of $9,697.50, amount of notes by him subscribed in his capacity as stated above.

And Mr. Barthélemy Lafon, in his capacity aforesaid, has hypothecated in like manner one-fourth of lots 24 and 25 of said plan, held and possessed undivided by the heirs De la Bigarre and Mr. Livingston, the said portions of ground having together a front of 94 feet by the depth stated on the plan, to secure the payment of $940, amount of notes subscribed by said Lafon in his said capacity as above set forth. "And for the inscription of the present mortgages, and for the registering of
244 the donation contained in the present act, all necessary powers are given to the holder of a copy of these presents.

Done and passed at my office, the day, month, and year above set forth, in the presence of Messrs. Jean Baptiste Desdunes, jr., and Jean B'te Donatieu Augustin, competent witnesses and residents, who, with the appearers, have signed with me, notary, after due reading; 55 words erased null, 8 lines interlined or overcharged good, and 5 references and the word "one" written in the margin good, the whole approved be-

fore signing; 111 words erased null, 14 words interlined good, and 4 references approved, in addition to the foregoing.

(Original signed)

EDW. LIVINGSTON.
JEAN GRAVIER.
C. TOLEDANO.
T. MOSSY.
L. B. MACARTY.
B. LAFON.
Testamentary Executor of Mr. De la Bigarre.
MANETTE ST. AMAND.
J. ROUFFIGNAC, *Mayor.*
E. MAZUREAU,
For ALEX'DER LABRANCHE.
VINCENT RILLIEUX.
J. PITOT,
Att'y in Fact of Heirs of Gravier.
WINTER & McCALL.
WILKINS & LINTON.
E. V. JOURDAIN.
J. B. DESDUNES, *fils.*
J. B. D. AUGUSTIN.
H. LAVERGNE, *Not. Pub.*

245, 246 *Letter from Judge Campbell to Judge Billings.—Filed June 11th, 1878.*

Hon. E. C. BILLINGS:

DEAR SIR: The decretal order produced decrees that ℳ3692 is to be carried out according to the judgment of the supreme court, according to the terms of the judgment and for what is contained in it.

The answer of the defendant puts in issue this decree and makes an interpretation of it contrary to its terms, and besides reconvenes for restitution very much as was done in the suit before the supreme court.

The decree would not respond to the matter before the court, if different.

The injunction is no more broad than the preliminary injunction in its import and effect.

Of course a preliminary injunction only deals with possession pendente lite.

The final decree in this case deals with the right as settled by the supreme court in the judgment.

247 *Decree.—Entered and filed June 11th, 1878.*

Circuit court of the United States, fifth circuit and district of Louisiana.

NEW ORLEANS, MOBILE AND TEXAS RAILroad Company
vs.
THE CITY OF NEW ORLEANS. } No 7972.

This cause came on to be heard on the pleadings, proceedings, and orders in the cause, and was argued by counsel for all of the parties.

The court, after consideration of the premises, declares, and decrees that the judgment rendered by the eighth district court of the parish of Orleans in the suit No. nineteen in that court, between these same parties, the 19th day of December, 1871, and which judgment was affirmed by the supreme court of this State the 4th day of May, 1874, upon appeal made by the defendant in this suit, has the authority of res judicata between them, the subject-matter of the two suits being the same, and the object identical; and the wrongs committed
248 by the defendant, as shown by the testimony, affects the property mentioned in the judgment so rendered by the State tribunals

The court orders and decrees that the injunction granted in this suit by the superior district court before its removal to this court be perpetuated, and the defendants be enjoined and restrained from disturbing the plaintiff, their agents, servants, and assigns, in the occupation, use, and employment of their railroad tracks, depots, and other appurtenances, under their charter, which are in and along the streets, squares, spaces, specified in the grants of the general assembly to the said corporation, and also in the order and decree of the said supreme court in the cause No. 3692 aforesaid, a transcript of which is on file; and that the defendants pay the costs of this suit.

June 11th, 1878.

(Signed) EDWARD C. BILLINGS, *Judge.*

249 *Petition for appeal.—Filed July 17th, 1878.*

NEW ORLEANS, MOBILE AND TEXAS RAILroad Co.
vs.
CITY OF NEW ORLEANS. } No. 7972.

To the honorable the circuit court of the United States for the fifth circuit and district of Louisiana:

The petition of the City of New Orleans, the defendant in the above suit, respectfully represents that in the said case on the 11th of June, 1878, a final decree was signed against the said defendant in a matter involving more than five thousand dollars, in which there was manifest error which will work irreperable injury to the defendant unless she can be relieved therefrom by an appeal to the Supreme Court of the United States.

Wherefore she prays, upon tendering a good and sufficient bond, as required by law, for security, in the sum of five hundred dollars, that an appeal be allowed in this case to said Supreme Court,
250 and that the same be made returnable according to law, and that the appellees be duly cited to answer the same; and, further, that the original maps and plans filed in the case be taken up in the record of appeal; and for all other relief in the premises.

(Signed) WM. W. KING,
(Do.) B. F. JONAS,
Of Counsel.

Order.

An appeal is allowed in this case as prayed for, returnable to the Supreme Court of the United States, on the second Monday of October, 1878, upon appellant giving bond, with good and solvent security, in the sum of five hundred dollars, conditioned as the law directs.

July 17th, 1878.

(Signed) EDWARD C. BILLINGS, *Judge.*

Bond for appeal.—Filed July 30th, 1878.

UNITED STATES OF AMERICA:

Know all men by these presents that we, the City of New Orleans, as principal and James Collin, are held and firmly bound, jointly
251 and severally, unto the New Orleans, Mobile and Texas Railroad Company, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said New Orleans, Mobile and Texas Railroad Company, its officers, heirs, executors, administrators, and assigns, for which payment well and truly to be made we bind ourselves, and each of us, by himself, and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals and dated the 29th day of July, in the year of our Lord eighteen hundred and seventy-eight.

Whereas the said City of New Orleans having heretofore, to wit, on the 17th day of July, 1878, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered June, 1878, by the circuit court of the United States, for the fifth circuit, holding sessions in and for the district of Louisiana, in the suit of the *the* New Orleans, Mobile and Texas Railroad Co. vs. City of New Orleans, No. 7972 of the docket thereof:

Now the condition of the above obligation is that if the
252 above-bounden City of New Orleans shall prosecute said appeal to effect, and shall answer all damages and costs if she shall fail to make good her plea, then this obligation shall be void, otherwise to remain in full force and effect.

(Signed) E. PILSBURY, *Mayor.* [L. S.]

(Signed) JOHN COLLINS. [L. S.]

253 *Letter from Judge Campbell to W. W. King, esq.—Received and filed Sept'r 16th*, 1878.

OLD POINT COMFORT, VIRGINIA,
26 *August*, 1878.

DEAR SIR: A letter from Mr. Jonas of the 21st inst. was sent to me here. He requested I should reply to it and send the answer to you. He desires to reduce the volume of the record in the appeal of the City of New Orleans vs. New Orleans, Mobile and Texas R. Co. to the Sup. Court of the U. S. from the decree of the circuit court.

The record can be much reduced in volume and I will readily consent to its deminution. There will be needed *There will be needed*—The petition, citation, order for injunction, and injunction issued.

2d. Answer and replication.

All the depositions taken in the circuit court, all the affidavits used as evidence, all of our agreements in the circuit court, and all the documentary evidence and maps, the orders of the court, and the decree, are needed.

I believe there is a copy of the opinion of the sup. court of the State in the transcript for the superior court which was filed there on a mo-
254 tion. This is superfluous, and a reference to the printed volume of the reports will suffice. In the record of the case No. 19, filed by me as part of the record of the case, more than one-half relates to Morgan and to Pontchartrain R. Company, and is immaterial for us. I designated the portions used on the hearing of the case in the circuit court in June. I consent that all of these portions may be

left out of the transcript to be made. I think the note of evidence specifies them. In the record No. 4, filed by you, there is a matter which is contained in No. 19. The Livingston compromise is copied at large in each. Only one copy is necessary, and I think the English translation might suffice, leaving out the French, which is a dead language to the judges of the S. C. for the most part. The maps can be sent up as they are, if copies be traced or otherwise substituted.

I think we could easily agree on a record were we together. In the condition of things, attention of business, I suppose, is irksome and not practicable.

I consent that the transcript may be filed at any time before the first day of January next without prejudice to your appeal. The docket of the supreme court left over is from 750 to 800 cases, so there is no hurry.

Very truly, yours,

J. A. CAMPBELL.

Col. W. W. KING.

255 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to the New Orleans, Mobile and Texas Railroad Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a petition and order for an appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, in the suit wherein the said New Orleans, Mobile and Texas Railroad Company is complainant and appellee, and the City of New Orleans is defendant and appellant, to show cause, if any there be, why the judgment rendered against the said City of New Orleans as in said petition for appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 27th day of July, in the year of our Lord one thousand eight hundred and seventy-eight.

EDWARD C. BILLINGS, *Judge.*

256 (Indorsed:) United States circuit court. No. 7972. New Orleans, Mobile & Texas Railroad Company vs. City of New Orleans. Citation.

Marshal's return.

Received Jul' 29, 1878, by the U. S. marshal, and on the 21st day of August, 1878, served a true copy of the within citation of appeal on the New Orleans, Mobile and Texas Railroad Company, complainants and appellees herein, through the trustees thereof, by leaving the same at their office, foot of Girod street, in the city of New Orleans, in the hands of George J. Pinckard, esq., the cashier of the New Orleans and Mobile R'road Company, the trustees being non-residents and absent from the district at the time of service, and D. B. Robinson, the superintendant of said New Orleans & Mobile Railroad, being also absent from the district.

left out of the transcript to be made. I think the note of evidence specifies them. In the record No. 4, filed by you, there is a matter which is contained in No. 19. The Livingston compromise is copied at large in each. Only one copy is necessary, and I think the English translation might suffice, leaving out the French, which is a dead language to the judges of the S. C. for the most part. The maps can be sent up as they are, if copies be traced or otherwise substituted.

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Very truly, yours,

J. A. CAMPBELL.

Col. W. W. KING.

255 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to the New Orleans, Mobile and Texas Railroad Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a petition and order for an appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, in the suit wherein the said New Orleans, Mobile and Texas Railroad Company is complainant and appellee, and the City of New Orleans is defendant and appellant, to show cause, if any there be, why the judgment rendered against the said City of New Orleans as in said petition for appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 27th day of July, in the year of our Lord one thousand eight hundred and seventy-eight.

EDWARD C. BILLINGS, *Judge.*

256 (Indorsed:) United States circuit court. No. 7972. New Orleans, Mobile & Texas Railroad Company vs. City of New Orleans. Citation.

Marshal's return.

Received Jul' 29, 1878, by the U. S. marshal, and on the 21st day of August, 1878, served a true copy of the within citation of appeal on the New Orleans, Mobile and Texas Railroad Company, complainants and appellees herein, through the trustees thereof, by leaving the same at their office, foot of Girod street, in the city of New Orleans, in the hands of George J. Pinckard, esq., the cashier of the New Orleans and Mobile R'road Company, the trustees being non-residents and absent from the district at the time of service, and D. B. Robinson, the superintendant of said New Orleans & Mobile Railroad, being also absent from the district.

And on the 23d of August, 1878, served a true copy on John A. Campbell, esq., solicitor for complainant and appellees herein, by leaving the same at his office, No. 3 Carondelet street, in the city of New Orleans, the said John A. Campbell being absent from the district at the time of service, and A. Micou, esq., occupying same office and representing said John A. Campbell, being also absent from the district.

W. G. ELLIOTT,
D'y Marshal.

On this the 26 day of Aug., 1878, personally appeared before me, William G. Elliott, a deputy U. S. marshal for the district of Louisiana, and makes oath that he served copies of the within citation as stated in his official return hereon.

W. G. ELLIOTT.

Sworn to and subscribed before me this 26 day of August, 1878.

F. B. VINOT,
U. S. Comm'r.

257 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 254 pages manuscript, printed record No. 19, 259 pages, and printed record No. 4, 146 pages, and maps 10, 11 & 12, & plans 13, 14, 15, & 19 do contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of The New Orleans, Mobile and Texas Railroad Company versus The City of New Orleans, No. 7972 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 6th day of December, A. D. 1878.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 6th day of December, A. D. 1878.

EDWARD C. BILLINGS, *Judge.*

(Here follows 7 maps, marked page 257.)

258 State of Louisiana, eighth district court for the parish of Orleans.

NEW ORLEANS, MOBILE AND CHATTANOOGA Railroad Company, appellee, *versus* THE CITY OF NEW ORLEANS ET ALS., APPELLANTS. } No. 19.

J. A. Campbell and J. R. Eustis, attorneys for appellee; Geo. S.

Lacey and W. W. King, attorneys for appellant; Lea, Finney & Miller, attorneys for Pontchartrain R. R. Co., appellant; Leovy & Monroe and Miles Taylor, attorneys for Morgan and others.

Compiled by J. D. Taylor.

7972. Filed by pl'ff, May 27, '78. K. Loew, d'y cl'k.

259 X.

State of Louisiana, eighth district court for the parish of Orleans.

NEW ORLEANS, MOBILE AND CHATTANOOGA Railroad Company, *versus* CITY OF NEW ORLEANS ET ALS. } No. 19.

Petition.—Filed April 5th, 1870.

STATE OF LOUISIANA,
Parish of Orleans:

To the judge of the eighth district court of the parish aforesaid:

The petition of the New Orleans, Mobile and Chattanooga Railroad Company, whose domicil is in New Orleans, respectfully shows, that by virtue of an act of the general assembly of said State, approved the 19th day of August, 1868, they were authorized to locate, construct, maintain and use a railroad with one or more tracks and with suitable turnouts from any point between Calliope and Girod streets and between Delta street and the levee, or the streets near the levee, in the city of New Orleans, to a point near Levee and Spain streets, thence by a curved line to Enghien street, and along that street and Lafayette avenue to Claiborne street, and thence to a point on the line of the States of Mississippi and Louisiana as should be designated by the directors of said company, which will more fully appear by a reference to the act No. 28 of the acts of 1868, which is made a part of this petition.

Your petitioners further show, that the general assembly, on the 21st of February, 1870, further to expedite the construction of the said road, by an act approved at that date, authorized and empowered your
260 petitioners to locate, construct and maintain and use for the passage of its engines and cars, the tracks of its railroad, with suitable curves, from the levee to the line designated in the ordinance of the city of New Orleans for the extension of Claiborne street along and upon the portion of Elysian Fields street and intervening streets originally designed for the two central banquettes or walks in Elysian Fields street, the said banquettes being two strips of ground twelve feet in width, one upon each side of and adjoining the land said to be owned by the Pontchartrain Railroad Company, in the central portion of said street; and in the said act annulled all the ordinances of the city to obstruct this right, and prohibited the passage of others, and gave entry to your petitioners upon the same.

Your petitioners further represent, that by the same act the mayor and common council, and the municipal authorities thereof, as well as the City of New Orleans, were prohibited from passing any ordinance which might hinder or prevent the laying of the tracks of the railroad of your petitioners within the corporate limits of said city, upon the lines or routes heretofore authorized by the State, and which have been or may be surveyed and located therefor, or which have been designated

upon the maps of such tracks, or which shall obstruct, disturb or interfere with such tracks, or with the full, free and perfect enjoyment and use thereof by the said company, when laid upon such routes and lines; and all the ordinances, grants, contracts or acts passed, made or done, or hereafter to be passed, made, entered into or done by the said City of New Orleans or the mayor and common council, or the municipal authorities, were declared to be wholly null, and to have no legal operative effect; all of which will more fully appear by the act relative to the said company of the date aforesaid, to which reference is craved, and the sixth section whereof is made a part hereof.

Your petitioners further show to your honor, that about the 29th day of December, 1868, they filed in the city hall with the mayor, and in the secretary of state's office, in that year, and also in the following year—April 8th, 1869—a map of their route, exhibiting its location in the city of New Orleans, and have since that time been employed in the construction of different parts of the road extending from this city to the city of Mobile, and since the enactment last mentioned they have modified their location so as to embrace the central banquettes aforesaid; all of which will appear by reference to copies of the said maps marked A 1, 2, and 3, filed herewith; and that by virtue of the said surveys, locations and legislative enactments, they became fully empowered to construct, maintain and use their road aforesaid and lay down the tracks thereof, without let or hindrance or molestation from any persons or the municipal authorities of the city, or the corporation itself, or any other persons claiming through or under their authority, the object of the legislature being to insure the early and prompt completion of an improvement which has been contemplated for many years, and not till now been commenced.

Your petitioners further show to your honor, that they have commenced and are proceeding to the completion of the railroad contemplated in their charter, from Mobile in Alabama to the city of New Orleans, and have commenced the laying of their tracks in this city, and had well hoped to have had the support of the municipal authorities of this city and all persons therein; but that certain persons, who suppose that their profits may be diminished by this enterprise, have combined to obstruct, impede and interrupt their progress and
261 to prevent their construction and use of their tracks as defined in their maps and surveys aforesaid, have, in the city of New Orleans, and in that part opposite the Jackson square and between that square and the Mississippi River, are actually laying down from the river northward, six tracks crossing the location of your petitioners' lines of tracks nearly at right angles. Before the tracks reach the tracks aforesaid, they approach by converging lines, and the rails of the separate tracks cross each other by frog-plates of large dimensions. The location of said tracks and frog-plates as now laid is impracticable according to their location aforesaid; while the number of rails and the proximity to be crossed would make the running of the engines and cars dangerous, by throwing them from the tracks and breaking wheels and machinery.

Your petitioners state that George Pandely, Chas. A. Whitney, A. C. Hutchison, the mayor and council of New Orleans, all of whom have their domicil in New Orleans, are implicated in this proceeding, the last by the toleration of a nuisance, to their sufferance of the acts aforesaid; and the others by their active participation and interference in the same; and your petitioners state that the same is done wantonly to injure and obstruct the progress of your petitioners' work by said parties.

Your petitioners further state that one Charles Morgan, who claims to be a citizen of the State of New York, pretends to have some right or interest therein, the quality of which is not intelligible to petitioners, but the use of it by him, his aiders and abettors, rendering it proper for him to be a party to this suit, as he is in some manner associated with Whitney & Co. and Pandely, and concerned with them.

Your petitioners state that the injury to them consists in the prevention of laying their tracks and obtaining the full possession and enjoyment of their rights, the delays consequent upon it in the completion of their road and the diminution of their capacity to employ their road with full effect, the loss of interest on capital expended, and the expense of their officers, agents, and employees, and they claim damages to the amount of one hundred thousand dollars.

Your petitioners state that the grants of the legislature to which your petitioners have referred are clear, direct, and certain in the declaration of your petitioners' rights, and entitle them to the protection they ask for.

Your petitioners pray that the city of New Orleans and its corporate authorities be enjoined from making or suffering any obstruction to the laying of the tracks of your petitioners, as authorized by the act of the general assembly, and as laid down and described in maps filed with the mayor and secretary of state, copies of which are filed with this petition, and from recognizing or assenting to any of their ordinances which have been repealed by said acts.

That the said corporation and its authorities, Geo. Pandely, Charles A. Whitney, A. C. Hutchison, Charles Morgan, their agents and employees, assistants, and aiders and abettors be enjoined with proceeding to construct their rail tracks across or near the tracks of your petitioners opposite Jackson square in this city so as to impede, obstruct, or interrupt the free passage of your petitioners' tracks, cars, and trains and other machinery, and that the said rails and frog-plates now located or in the course of location upon service of this injunction be removed.

That citation issue to said City of New Orleans, and be served on its mayor and the several parties aforesaid to appear to this petition in due course of law, and that judgment be awarded against said Pandely, Chas. A. Whitney, A. C. Hutchison, and Charles Morgan for one
262 hundred thousand dollars as damages, and that your petitioners be maintained and upheld in all the grants made to them of passage and use of the tracks described in the said acts and maps as filed herewith, and a perpetual injunction be awarded on the final hearing, and your petitioners' title forever quieted.

That such other relief be granted as is consistent with law and right.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
Attorneys for the Plaintiff.

Affidavit.

Before me, a justice of the peace for the parish of Orleans, personally came Wm. S. Williams, treasurer of the New Orleans, Mobile and Chattanooga Railroad Company, who made oath that the matters of fact stated in this petition are of his own knowledge as stated, and those derived from information he believes to be true as stated.

(Signed) WM. S. WILLIAMS.

Sworn to and subscribed before me, April 4th, 1870.

(Signed) A. SHELLEY,
Second Justice of the Peace.

Order.

Let writ of injunction issue as prayed for within, upon petitioners giving bond in the sum of five thousand dollars, conditioned as the law directs.

New Orleans, April 4th, 1870.

(Signed) HENRY C. DIBBLE, *Judge.*

Bond.—Filed April 5th, 1870.

Know all men by these presents that we, The New Orleans, Mobile and Chattanooga Railroad Company as principal, and Thomas H. Hunt as security, of the city of New Orleans and State of Louisiana, are held and firmly bound unto in the sum of five thousand dollars, lawful money of the United States of America, to be paid to the said , heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seal and dated the fourth day of April, in the year of our Lord 1870.

Whereas the said New Orleans, Mobile and Chattanooga Railroad Company has this day prese.. l a petition to the honorable the eighth district court for the parish of Orleans, praying a writ of injunction:

Now, the conditions of the above obligation is that we, the above-bounden and will well and truly pay to said , the defendants in said , all such damages as may recover against us, in case it should be decided that the was wrongfully obtained.

(Signed) W. S. WILLIAMS,

(Signed) *Treasurer N. O., M. and Chat. R. R. Co.*

THOS. H. HUNT.

263 Signed, sealed, and delivered in the presence of—

(Signed) R. R. RANDOLPH.

(Signed) ALEX. T. HUNT.

Writs of injunction.—Issued April 5th, 1870.

State of Louisiana, eighth district court for the parish of Orleans.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

The State of Louisiana to the City of New Orleans, through B. F. Flanders, mayor, C. A. Whitney, George Pandely, Chas. Morgan, and A. C. Hutchison, greeting:

You are hereby commanded, enjoined, and restrained, in the name of the State of Louisiana and of the eighth district court for the parish of Orleans, from making or suffering any obstruction to the laying of the tracks of said petitioners, as authorized by the acts of the general assembly of this State, and according to the maps filed with the mayor and secretary of state, copies of which are filed with the original petition in this suit, and from recognizing or assenting to any of the ordinances of said city which have been repealed in said acts, and that said corporation of the city of New Orleans, its corporate authorities,

together with Geo. Pandely, A. C. Hutchison, C. A. Whitney, and Charles Morgan, their agents and employees, assistants, aiders and abettors, are enjoined with proceeding to construct their rail tracks aforesaid across, in, or near to the tracks of said company aforesaid, opposite Jackson square, in this city, so as to impede, obstruct, or interrupt the free passing of the tracks, cars, engines, trains, and other machinery of said company, and that the said rails and frog-plates now located or in the course of location on the lines of the petitioners upon service of this injunction be removed; and you are so enjoined, and until the further order of this honorable court.

Witness the honorable Henry C. Dibble, judge of our said court, this fifth day of April, in the year of our Lord one thousand eight hundred and seventy, and in the ninety-fourth year of the Independence of the United States.

[SEAL.] (Signed) J. CORPREW,
Dy Clerk.

Sheriff's return on writs of injunction.—Filed April 7th, 1870.

Received April 5th, 1870, and on same day served true copy of within injunction, personally, on B. F. Flanders, mayor of the city of New Orleans.

Returned same day.

(Signed) J. P. EXNICIOS,
Dy Sheriff.

Sheriff's return on writ of injunction issued to C. A. Whitney.—Filed April 7th, 1870.

Received April 5th, 1870, and on same day served true copy of within injunction, personally, on C. A. Whitney.

Returned same day.

(Signed) J. P. EXNICIOS,
Dy Sheriff.

264 *Sheriff's return on writ of injunction issued to George Pandely.—Filed April 7th*, 1870.

Received April 5th, 1870, and on same day served a true copy of within writ of injunction, personally, on George Pandely.

Returned same day.

(Signed) J. P. EXNICIOS,
Dy Sheriff.

Sheriff's return on writ of injunction issued to Charles Morgan.—Filed April 7th, 1870.

Received April 5th, 1870, and on same day served true copy of within writ of injunction on Charles Morgan, by personal service on his agent, C. A. Whitney.

Returned same day.

(Signed) J. P. EXNICIOS,
Dy Sheriff.

Sheriff's return on writ of injunction issued to A. C. Hutchison.—Filed April 7th, 1870.

Received April 5th, 1870, and on the sixth day of the same month and year served a true copy of within writ of injunction personally on A. C. Hutchison.

Returned same day.

(Signed) J. P. EXNICIOS,
D'y Sheriff.

Citation.—Issued April 7th, 1870.

State of Louisiana, eighth district court for the parish of Orleans, in the city of New Orleans.

N. O., M. AND CHAT. R. R. CO. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

To the City of New Orleans through its mayor, B. F. Flanders, C. A. Whitney, George Pandely, Chas. Morgan, and A. C. Hutchison:

You are hereby summoned to comply with the demand contained 'n the petition of which a copy accompanies this *petition*, or deliver your answer to the same in the office of the clerk of the eighth district court for the parish of Orleans in ten days after the service hereof.

Witness the honorable Henry C. Dibble, judge of the said court, the seventh day of April, in the year of our Lord eighteen hundred and seventy.

[SEAL.] (Signed) J. CORPREW,
D'y Clerk.

Sheriff's return on citation.—Filed April 9, 1870.

Received April 7th, 1870, and on the eighth day of the same month and year served a copy of the within citation and accompanying petition on the city of New Orleans, defendant herein, by leaving the same at the office of the Hon. B. F. Flanders, mayor of said city, in the city hall, corner Lafayette and St. Charles, in the hands of H. Con-
265 quest Clarke, his secretary, who informed me that the said mayor was absent from his office at the time of said service.

Returned same day.

(Signed) PH. LACOSTE,
D'y Sheriff.

Sheriff's return on citation issued to C. A. Whitney.—Filed April 9, 1870.

Received April 7th, 1870, and on the eighth day of the same month and year served copy of the within citation and accompanying petition on C. A. Whitney, one of the defendants herein, in person.

Returned same day.

(Signed) PH. LACOSTE,
D'y Sheriff.

Sheriff's return on citation issued to Geo. Pandely.—Filed April 9, 1870.

Received April 7th, 1870, and on the eighth day of the same month and year served a copy of within citation and accompanying petition on George Pandely, one of the defendants herein, in person.

Returned same day.

(Signed) P. A. FORTIER,
Dy Sheriff.

Sheriff's return on citation issued to Charles Morgan.—Filed April 9, 1870.

Received on April 7th, 1870, and on the eighth day of the same month and year served a copy of the within citation and accompanying petition on Charles Morgan, one of the defendants herein, in person.

Returned same day.

(Signed) PH. LACOSTE,
Dy Sheriff.

Sheriff's return on citation issued to A. C. Hutchison.—Filed April 12, 1870.

Received April 7th, 1870, and on the ninth day of the same month and year served a copy of the within citation and accompanying petition on A. C. Hutchison, one of the defendants herein, by leaving the same at his domicil, No. 636 St. Charles street, in the hands of Constance James, a colored person, apparently above fourteen years of age, living and residing in the same domicil, whose name and other facts connected with this service I learned by interrogating her, the said Hutchison being absent from home at the time of said service.

Returned same day.

(Signed) PH. LACOSTE,
Dy Sheriff.

Petition to transfer case to United States circuit court.—Filed April 7, 1870.

Eighth district court for the parish of Orleans.

N. O., M. AND CHAT. R. R. Co.
vs.
CITY OF NEW ORLEANS, PANDELY, CHARLES Morgan et als. } No. 19.

The petition of Charles Morgan, who is a citizen of the State of Louisiana and a resident of the city of New York, in said State, respectfully represents:

266 That a suit has been instituted against him in this honorable court by the New Orleans, Mobile and Chattanooga Railroad Company, incorporated under and by virtue of the laws of Louisiana, and having its domicil in the city of New Orleans, in said State of Louisiana, in which said New Orleans, Mobile and Chattanooga Railroad Company claim one hundred thousand dollars.

And your petitioner now enters the first appearance in said court, and avers that by the 12th section of an act of Congress of the United

States, entitled "An act to establish the judicial courts of the United States," approved September 24th, 1789, he has the right to have the cause removed for trial into the next circuit court of the United States to be holden in the district of Louisiana, and that the matter in controversy exceeds five hundred dollars, as will more fully appear by reference to the petition in suit No. 19. That petitioner is the sole owner of the property affected by the injunction issued by this honorable court; and petitioner refers to the affidavits annexed.

And your petitioner further represents, that he now offers good and sufficient surety for his entering in the said circuit court, on the first day of its session, copies of the said process against him, in a bond in the penal sum of one thousand dollars, signed by himself as principal and John B. Heno, as surety, as required by law, and conditioned as the law directs.

Wherefore your petitioner prays, the premises and the annexed bond being considered, that the court will be pleased to accept the surety offered, and that your honor will proceed no further in the cause, and that you will order the removal of the cause to the circuit court of the United States for the district of Louisiana.

And your petitioner further prays for general relief.

(Signed) HENRY J. LEOVY & F. A. MONROE,
Attorneys for Charles Morgan.

Affidavit of Charles Morgan, annexed to petition to transfer.

Charles Morgan, being duly sworn, deposes and says, that the allegations contained in the foregoing petition are true; that he is a citizen of the State of New York, and resides in the city of New York, in said State; that the New Orleans, Mobile and Chattanooga Railroad Company are incorporated under and by virtue of acts of the legislature of Louisiana, and have their domicil in New Orleans, in said State; that the amount involved in said controversy exceeds five hundred dollars, and that he is sole owner of the property affected on which the injunction was issued.

(Signed) CHARLES MORGAN.

NEW ORLEANS, *April 6th*, 1870.

Sworn to and subscribed before me to-day.

[SEAL.] (Signed) A. SHELLEY,
Second Justice of the Peace.

Affidavit of Charles A. Whitney, annexed to petition to transfer.

Charles A. Whitney, being duly sworn, deposes and says, that he is a member of the firm of Charles A. Whitney & Company, doing business and domiciliated in the city of New Orleans; that neither himself nor the firm of which he is a member is in any manner owner of the road commonly called Morgan's Louisiana and Texas Railroad
267 and lately known as the New Orleans, Opelousas and Great Western Railroad, nor does he or the firm own any part thereof; that he is agent of Charles Morgan, and is paid for his services an annual salary. Deponent further says that he is in no manner interested in the suit of the New Orleans, Mobile and Chattanooga Railroad Company vs. The City of New Orleans, George Pandely, Charles Morgan et als.

(Signed) CHARLES A. WHITNEY.

NEW ORLEANS, *April* 6, 1870.

Sworn and subscribed to before me to-day.
[SEAL.] (Signed) A. SHELLEY,
Second Justice of the Peace.

Affidavit of George Pandely, annexed to petition to transfer.

George Pandely, being duly sworn, deposes and says he is the superintendent of the "Morgan's Louisiana and Texas Railroad," and domiciliated in the city of New Orleans; that he is not interested in the business of Charles Morgan; that he is paid for his services an annual salary. Deponent further says that he is no manner interested in the said suit of the New Orleans, Mobile and Chattanooga Railroad Company vs. The City of New Orleans, George Pandely, Charles Morgan, et als.

(Signed) GEO. PANDELY.

NEW ORLEANS, *April* 6, 1870.

Sworn and subscribed to before me to-day.
[SEAL.] (Signed) A. SHELLEY,
Second Justice of the Peace.

Affidavit of Alexander C. Hutchison, annexed to petition to transfer.

A. C. Hutchison, being duly sworn, deposes and says that he is a member of the firm of Charles A. Whitney & Company, doing busines' and domiciliated in the city of New Orleans; that neither himself nor the firm of which he is a partner is any manner owner of the road commonly called "Morgan's Louisiana and Texas Railroad," and lately known as the New Orleans, Opelousas and Great Western Railroad Company, nor does he or the firm own any part thereof; that he is not connected in the business of Charles Morgan; that he is the agent of Charles Morgan, and is paid for his services an annual salary. Deponent further says that he is no manner interested in the suit of the New Orleans, Mobile and Chattanooga Railroad Company vs. The City of New Orleans, George Pandely, Charles Morgan, et als.

(Signed) ALEXANDER C. HUTCHISON.

NEW ORLEANS, *April* 6, 1870.

Sworn and subscribed to before me to-day.
[SEAL.] (Signed) A. SHELLEY,
Second Justice of the Peace.

Bond annexed to petition to transfer to United States circuit court.

Eighth district court, parish of Orleans.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS.

Know all men by these presents that we, Charles Morgan, as
268 principal, and John B. Heno, as surety (said surety residing in the city of New Orleans, Louisiana), are held and firmly bound unto the Mobile and Chattanooga Railroad Company, plaintiffs in the above-entitled suit, in the sum of one thousand dollars ($1,000), for the payment of which we bind ourselves, our heirs, executors, administrators, and assigns, to the plaintiffs, their assignees, heirs, etc.

Signed, sealed, and delivered in New Orleans, in the State of Louisiana, this sixth day of April, 1870.

Whereas the above bounded Charles Morgan has presented on this day to the eighth district court for the parish of Orleans, State of Louisiana, his petition, praying the removal of the cause wherein the said New Orleans, Mobile and Chattanooga Railroad Company are plaintiffs and the said Charles Morgan defendant, and which is numbered "nineteen" on the docket of the eighth district court to the circuit court of the United States for the district of Louisiana:

Now, the condition of the above obligation is such that if the said Charles Morgan shall, on the first day of the next session of the circuit court of the United States for the district of Louisiana, enter copies therein of the process in this cause, and then and there do and perform all the other acts required of him by the laws of the United States in regard to the removal of causes from State courts, then the foregoing obligation to be null and void, but otherwise to remain in full force and effect.

(Signed) CHARLES MORGAN.
(Signed) JOHN B. HENO.

HENRY J. LEOVY, *Witness.*

Order: Rule.—Issued April 7, 1870.

N. O., M. AND CHAT. R. R. Co.
vs.
CITY OF NEW ORLEANS, GEO. PANDELY, Chas. Morgan et als. } No. 19.

On motion of Henry J. Leovy and F. A. Monroe, of counsel for Charles Morgan, a citizen of New York, who now enters his appearance in the above-entitled cause for the first time, and files his bond in the penal sum of one thousand dollars, with a good and sufficient surety, together with his petition, praying for the removal of said cause to the circuit court of the United States for the district of Louisiana according to law—

It is ordered that said plaintiff, the said New Orleans, Mobile and Chattanooga Railroad Company, be notified of the same, and show cause, on Tuesday, 12th day of April, at 10 o'clock a. m., why the prayer of said petition shall not be granted, and the said cause be removed as prayed for in said petition.

Sheriff's return.—Filed April 9, 1870.

Received April 5th, 1870, and on the 8th day of the same month and year served copy of within rule on the New Orleans, Mobile and Chattanooga Railroad Company, plaintiff herein, by leaving the same at the office of said company, room No. 7, Gallier's court, corner Carondelet and Common streets, in the hands of R. F. Harrison,
269 the book-keeper, who informed me that the president and secretary were both absent from the office at the time of said service.

Returned same day.

(Signed) PH. LACOSTE,
D'y Sheriff.

Affidavit of Charles Morgan.—Filed April 12, 1870.

Charles Morgan, being duly sworn, deposes and says that he is the sole owner of the property formerly belonging to the New Orleans, Opelousas and Great Western Railroad Company, including its franchises and its ferry and landing privileges, and particularly the privileges described in ordinances of the City of New Orleans Nos. 2890 (or 2290), approved July 10th, 1855, and 799 N. S., approved December 16th, 1867.

That neither the City of New Orleans, Geo. Pandely, Chas. A. Whitney nor A. C. Hutchison has any interest in said road, its franchises and privileges, and that he is the only party interested in the matters and thereby affected by the injunction issued by this honorable court in the case of the New Orleans, Mobile and Chattanooga Railroad Company vs. City of New Orleans, Geo. Pandely, Charles Morgan, et als., No. 19 of the docket of this court.

(Signed CHARLES MORGAN.

NEW ORLEANS, *April* 11, 1870.

Sworn and subscribed before me to-day.

[SEAL.] A. SHELLEY,
Second Justice of Peace.

Rule to transfer submitted.—Extract from minutes, April 12, 1870.

N. O., M. AND CHAT. R. R. Co.
vs.
CITY OF NEW ORLEANS, GEO. PANDELY, Charles Morgan, et als. } No. 19.

The rule taken by the defendants on the plaintiffs to show cause why the case should not be transferred to the United States circuit court came on.

Present: H. J. Leovy, Bradford, Lea & Finney, for plaintiffs in rule; Campbell, Spofford & Campbell, for defendants in rule.

When, after hearing pleadings and arguments of counsel, the matter was submitted to the court for determination.

Order: Rule.—Filed April 13, 1870.

In the eighth district court for the parish of Orleans.

N. O., M. AND CHAT. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 19.

On motion of J. R. Beckwith, city attorney for the City of New Orleans, and the several officers thereof named as defendants herein, and on suggesting that the writs of injunction in this cause against the above-named parties defendant were improvidently issued; and further suggesting that the acts prohibited by said injunction are not such as may work an irreparable injury to the plaintiffs, and that the
270 effect of said injunction is such as to cause to the said City of New Orleans irreparable injury if permitted to remain in force.

It is ordered that the said writs of injunction issued in this cause against the City of New Orleans and the officers thereof be, and the same are hereby, dissolved, under the conditions and provisions of art. 307 of the Code of Practice in such cases provided; and the City of New

Orleans being exempted from giving bond in judicial proceedings, that the said writs of injunction be dissolved, as in case of bond, the City of New Orleans becoming responsible to said plaintiffs to deliver the property in dispute in the same condition as it was at the moment when the injunction issued, or to pay said plaintiff all damages which it may sustain by the act of the City of New Orleans, if definitive judgment be rendered

Your petitioners further state that the Pon'chartrain Railroad Com- against it in the suit pending; such obligation being in the spirit and to the extent provided and required by art. 307, Code of Practice.

On presentation of the foregoing motion, the court ordered that the matter be fixed for argument on Tuesday, the 19th day of April, 1870, at 10 o'clock a. m., and that plaintiffs be notified hereof.

Order: Rule.—Issued April 14, 1870.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS.

On motion of J. R. Beckwith, city attorney for the City of New Orleans, and the officers thereof named in said petition, and on suggesting to the court that the writs of injunction ordered and issued in this cause were illegally and improvidently issued, and are in all respects void, for the following reasons, among others:

First. That all and singular the allegations in the petition, if taken as true—which defendant in no wise admits—do not lay the basis for the lawful issue thereof.

Second. That the plaintiff's petition is not sworn to or attested by the oath of any person authorized to verify the same, or administered by any person or officer having authority to administer oaths.

Third. That the bond upon which said writs were issued is not executed in the form or by the parties required by law.

Fourth. That said bond is inadequate and insufficient in amount, and the surety on the same is not solvent.

It is ordered that the plaintiff show cause, on Tuesday, the 19th day of April, 1870, why the writs of injunction issued in this cause
271 against the City of New Orleans and the several officers and administrators thereof should not be quashed, annulled, and set aside, with costs.

Sheriff's return on rule.—Filed April 18, 1870.

Received April 14, 1870, and on the sixteenth day of the same month and year served copy of the within rule on the New Orleans, Mobile and Chattanooga Railroad Company, plaintiffs herein, by leaving the same at the office of said company, room No. 7, Gallier's court, corner of Carondelet and Common streets, in the hands of Henry Van Vleck, the chief engineer, who informed me that the president and secretary were absent from the office at the time of said service. Returned same day.

(Signed) PH. LACOSTE,
D'y Sheriff.

Order: Rule.—Issued the 14th of April, 1870.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 19.

It is ordered that the motions to dissolve the injunction in the above cause be fixed for trial together on Tuesday next, the 19th instant, and that all parties be notified thereof.

Sheriff's return on rule.—Filed April 14, 1870.

Received April 14, 1870, and on the sixteenth day of the same month and year served copy of the within order on the New Orleans, Mobile and Chattanooga Railroad Company, plaintiff herein, by leaving the same at the office of said company, room No. 7, Gallier's court, corner of Common and Carondelet streets, in the hands of Henry Van Vleck, the chief engineer, who informed me that the president and secretary were both absent from the office at the time of said service. Returned same day.

(Signed) PH. LACOSTE,
Dy Sheriff.

Reasons for refusal to transfer cause to United States circuit court, except as against defendant Charles Morgan.—Filed April 16, 1870.

Eighth district court for the parish of Orleans.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 19.

REASONS.

This injunction suit is brought by the plaintiff against the City of New Orleans, George Pandely, Charles A. Whitney, A. C. Hutchison, and Charles Morgan. One hundred thousand dollars damages are claimed of Morgan, Whitney, and Pandely.

Charles Morgan has filed a petition alleging that he is a citizen of another State, and prays that the suit be transferred to the circuit court of the United States for the district of Louisiana. Annexed to this petition is the affidavit of Morgan that he is a citizen of New York, and that he is the sole owner of the property affected by the injunc-
272 tion issued in this suit; also affidavits of Pandely, Whitney, and Hutchison, to show that they have no interest in the property said to be affected, etc.

Upon this showing it was urged by the applicant, upon the rule to transfer, that the whole cause should be removed.

Plaintiff offers no opposition to the removal as against Morgan, but contends that the suit should stand in this court as against the other defendants, who are admitted to be citizens of this State (or domiciled in this State, as in the case of the City of New Orleans).

Section 12 of the judiciary act of 1789, under which the cases cited by counsel for Morgan arose, is amended by the act of Congress approved July 27, 1866. This latter statute provides, among the other things, that if an injunction suit be brought in a State court against a

citizen of another State, who is made a defendant with a citizen of the State in which the suit is brought, the citizen of the other State may cause the suit, as against him, to be removed to the circuit court; but "such removal of the cause, as against the defendant petitioning therefor, into the United States circuit court, shall not be deemed to prejudice or take away the right of the plaintiff to proceed at the same time with the suit in the State court as against the other defendants, if he shall desire to do so."

That Pandely, Whitney, and Hutchison have no interest in the property affected by this injunction might be good ground for the dismissal of the proceedings against them herein, but is no reason or cause for the removal of the case to the United States court as against them. The Federal court would have no jurisdiction to determine whether they ar' interested in the property or not, and thus the practical effect of such a removal would be to defeat or delay action against such resident defendants, upon their ex-parte allegations of non-interest.

The City of New Orleans is also made a party defendant; it cannot be urged that this suit should be removed as against that corporation.

But a more potent reason for refusing the transfer as against Whitney, Hutchison, and Pandely is that the plaintiff claims damages of them; they are citizens, with the plaintiff, of this State. As agents, they may be liable for costs, without regard to their principal. The State court must determine.

It is, therefore, ordered that all further proceedings herein as against defendant Charles Morgan cease; that the suit as against said defendant be removed to the circuit court of the United States for the district of Louisiana; that the cause as against the other defendants remain as if this order of removal had not been made, and that the injunction against the said defendants over whom this court has jurisdiction remain in full force and virtue.

Judgment on rule to transfer.—Extract from minutes, April 16, 1870.

Eighth district court for the parish of Orleans.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 19.

In the matter of the prayer of Charles Morgan, one of the defendants herein, to remove the cause to the United States circuit court for the district of Louisiana, submitted to the court for determination, and for the reasons assigned in the written opinion this day delivered and filed—

The court ordered that all further proceedings herein as against
273 the defendant Charles Morgan cease; that the suit against said defendant be removed to the circuit court of the United States for the district of Louisiana; that the cause as against the other defendants remain as if this order of removal had not been made, and that the injunction against said defendants over whom this court has jurisdiction remain in full force and virtue.

Answer.—Filed April 19, 1870.

Eighth district court for the parish of Orleans.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

Now comes into this honorable court George Pandely, Charles A. Whitney, and Alexander C. Hutchison, residents of New Orleans, defendants herein, who, for answer to plaintiff's petition, deny all and singular the allegations therein contained, except in so far as may be admitted.

Defendants allege that they have no personal interest whatever in the matter and things complained of in plaintiff's petition; that they are employed by Charles Morgan, and are paid monthly salaries by him; that Charles Morgan is the only party interested in this suit, and that by order of this honorable court the cause, so far as said Charles Morgan is concerned, has been transferred to the United States circuit court for the district of Louisiana.

Defendants deny that they, or any of them, are trespassers on the lands and premises described in plaintiff's petition; they allege that Charles Morgan was in legal possession at the time referred to, and that they were acting by his permission and under his authority.

That the legislature of the State of Louisiana, by an act entitled "An act supplementary to an act to incorporate the New Orleans, Opelousas and Great Western Railroad Company," approved April 30, 1853, authorized and empowered said railroad company to locate, construct, maintain, and operate a ferry or ferries from the depot property on the right bank of the Mississippi River to one or more points within the corporate limits of the city of New Orleans; and declared that the city of New Orleans should grant, cede, and donate to the said company the right of landing for said ferry or ferries at one or more points within the corporate limits of the city of New Orleans; and that spaces to be allowed for landing by the city for use of the said railroad should be defined and limited by the city council of New Orleans; that afterwards the city council of said city of New Orleans, by an ordinance, No. 2890 (2290), approved July 10, 1855, granted all that portion of the port of New Orleans from the beef-market at the foot of St. Ann street, in the second district, fronting on the Mississippi River, to the wharf of the New York mail-steamers, the same being one hundred and fifty feet on the line of the river, and extending back in straight lines to Levee street, to the New Orleans, Opelousas and Great Western Railroad Company, as a ferry landing and depot for passengers and freight, for the term of twenty-five years from the passage of said ordinance named; and by another ordinance, No. 799, new series, approved December 16, 1867, granted an additional one hundred and twenty-five feet on the Mississippi River, commencing on the lower side of said ferry landing, at St. Ann street, and extending down the river, and set the same apart for the use of the said company for freight and ferry purposes.

274 Defendants further say that in the suit of Charles Morgan vs. New Orleans, Opelousas and Great Western Railroad Company, No. 5788 of the docket of the United States circuit court for the district of Louisiana, all the property and franchises of the said company were sold by the United States marshal on the 21st day of May, 1869, when

Charles Morgan being the last and highest bidder, the property was adjudicated to him; and that by said adjudication the said Charles Morgan became the owner and possessor of the railroad belonging to the New Orleans, Opelousas and Great Western Railroad Company, with the depots and landings above described, ferries and ferry privileges, and all franchises belonging to said company, and particularly all the property and privileges described in plaintiff's petition, and of the right to land at the point described at or near the foot of St. Ann street, and to use the spaces allowed by the city for the use of said railroad and for the convenience of the travel and transportation by said railroad.

Wherefore these defendants ask for judgment in their favor, with costs, and for all general and equitable relief.

(Signed) HENRY J. LEOVY,
" F. A. MONROE,
Attorneys for Defendants.

Rules to dissolve continued.—Extract from minutes, April 19, 1870.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

The rules taken in this cause by the City of New Orleans on the plaintiffs to show cause why the injunction herein issued should not be dissolved were ordered to be continued till to-morrow morning at 10 o'clock.

Rules to dissolve continued.—Extract from minutes, April 20, 1870.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

The rules to dissolve the injunction herein issued, fixed for this day for trial, were ordered to be continued until Monday, 25th day of April, 1870, at 10 o'clock a. m.

Rules to dissolve continued.—Extract from minutes, April 25, 1870.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

The rules taken herein by the City of New Orleans on the plaintiff to show cause why the injunction issued should not be dissolved were ordered to be continued until to-morrow, the 26th inst., at 10 o'clock a. m.

275 *Rules to dissolve submitted.—Extract from minutes, April* 25, 1870.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

The two rules to dissolve the injunction herein fixed for this day came on.

Present: J. R. Beckwith, for plaintiff in rule; Campbell, Spofford & Campbell, for defendants in rule.

When, after hearing pleadings and arguments of counsel, the court took the matter under advisement.

Supplemental petition, affidavit, order, and bond.—Filed May 2, 1870.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 19.

To the honorable the judge of the eighth district court for the parish of Orleans:

The petition of the New Orleans, Mobile and Chattanooga Railroad Company, domiciled in New Orleans, respectfully shows that the said corporation has been duly organized and incorporated by the State of Louisiana.

That under and by operation of the acts of incorporation, and divers acts of the general assembly, passed the 19th of August, 1868, 17th of February, 1869, and 21st of February, 1870, there has been granted a right of way through the streets and on and across the levee of the city, and that the general assembly have by these acts adopted the maps and surveys of the said company, as filed, and has designated the place in Elysian Fields street through which the said road, described in the acts aforesaid, might pass in the city of New Orleans.

The petitioners further represent that heretofore, in this honorable court, they sued out a writ of injunction against Charles Morgan, George Pandely, Charles A. Whitney, and A. C. Hutchison, together with the City of New Orleans, whereby the said corporation of the city was enjoined, and required to keep open and to maintain the streets and public places aforesaid, free and clear of obstructions, so that the said petitioners might lay down their tracks of railroad through the city free of all obstruction, and that they should not be hindered and prevented in constructing, operating, and maintaining their roads under the acts of the general assembly aforesaid, and their survey as aforesaid, copies of which maps whereof are herewith filed as a part of the petition, and to be taken as a part thereof.

Your petitioners further state that the Pontchartain Railroad Company, a company having a short road from this city to the Lake Pontchartrain, obtained, about the year 1830, a permission from the city council of New Orleans to run their railroad along the streets, road, and walking avenues which line the space of ground reserved by Mr. Bernard Marigny, so far that no inconvenience shall result to the public, and under this permission they have not only run their road, but placed some structures upon the northern and southern, or upper and lower, banquettes described in the act of 21st of February, 1870,
276 in section one of that act. They further represent that, without title, the said corporation have taken possession of certain property dedicated by Bernard Marigny as a place for a canal, and was held and reserved for that purpose by him, and only reserved therefor. But the said corporation, under a pretext of a claim for his canal rights, have appropriated the same for their own use without making a canal.

These petitioners further aver that the said company have refused obedience to the act of the legislature appropriating these banquettes to the public use designated in said act, and while the same was

before the governor of the State for consideration, and on the same day that the same was approved by him, the said Pontchartrain Railroad Company went before the seventh district court and obtained an injunction, ex parte, to restrain your petitioners from laying their tracks, and otherwise appropriating the said property; which injunction has become of no effect by the establishment of this honorable court.

These petitioners aver that the same was done to evade the operation of an act that had passed the two houses of the general assembly, and was about to become a law.

That these petitioners had not done, or attempted to do, any act in the premises violative to the said property, nor had the Pontchartrain Railroad Company the least ground to apprehend injury to said property, or any appropriation of the said tracks, unless the said company were deprived of their license by competent authority. The petitioners aver that the act of the general assembly does revoke all permission and license on the part of the City of New Orleans; and from the date of said act of 21st of February, 1870, before referred to, relative to the New Orleans, Mobile and Chattanooga Railroad Company, the said Pontchartrain Railroad Company have retained said property without license, and are trespassers and wrong-doers.

These petitioners further represent to your honor that George Pandely is the superintendent of said Pontchartrain Railroad Company, and the said Charles A. Whitney and A. C. Hutchison, either as agents or otherwise, are associated and combined with him and with the Pontchartrain Railroad Company to defeat the operations and to obstruct the actions of the petitioners, and both of them represent their entire ability and disposition to maintain their possession.

To the end, therefore, that the rights and powers granted to these petitioners by the public act of the general assembly aforesaid, and that the rights therein granted may be enforced and the supremacy of the law vindicated, your petitioners respectfully pray that the injunction heretofore granted in the suit of the petitioners against the City of New Orleans and the corporate authorities of the same may be extended to embrace the tracks described in the surveys and maps of surveys, and a copy of which is filed herewith, and this petition be taken and held as supplemental to the petition in that cause; that the Pontchartrain Railroad Company be made a party to this suit, and that the superintendent, George Pandely, and the said company, together with said Charles A. Whitney & Company, their agents, attorneys, employees, or other parties connected with them, be severally and collectively enjoined from obstructing, hindering, preventing or in any wise interfering with the laying of the tracks of the company upon the grounds specified in the maps of surveys and the spaces of ground mentioned in the first section of the act of the 21st of February, 1870, of the general assembly aforesaid, being the central banquettes aforesaid,

277 and from hindering and obstructing the removal of any structure or material thereon that may in any manner hinder or obstruct or impair the location, maintenance, construction and use of the said road.

And your petitioners further pray that citation may issue to the said several defendants aforesaid, and that such other relief be granted as may be just and proper.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
For Petitioner.

Affidavit.

STATE OF LOUISIANA,
Parish of Orleans:

Before me personally came W. S. Williams, who maketh oath and saith that he is treasurer of the New Orleans, Mobile and Chattanooga Railroad Company, who maketh oath and saith that the matters of fact stated in the foregoing petition are true in substance and matter of fact as therein stated.

(Signed) W. S. WILLIAMS.

Sworn and subscribed before me the 30th day of April, 1870.

(Signed) HENRY C. DIBBLE, *Judge.*

Order.

Let this supplemental petition be filed. Let the Pontchartrain Railroad Company be made a party hereto, and, together with the other parties defendant, cited. Let an injunction issue as within prayed for and according to law, upon petitioners giving bond in the sum of twenty-five thousand dollars ($25,000), conditioned as the law directs.

New Orleans, April 30, 1870.

(Signed) HENRY C. DIBBLE, *Judge.*

Bond.—Filed May 2, 1870.

Know all men by these presents that we, the New Orleans, Mobile and Chattanooga Railroad Company, as principal, and Thomas B. Lee, as security, of the city of New Orleans and the State Louisiana, are held and firmly bound unto the Pontchartrain Railroad Company in the sum of twenty-five thousand dollars, lawful money of the United States, to be paid to the said Pontchartrain Railroad Company, its heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seal and dated the sixth day of April, in the year of our Lord 1870.

Whereas the said New Orleans, Mobile and Chattanooga Railroad Company has this day presented a petition to the honorable the eighth district court for the parish of Orleans, praying a writ of injunction:

Now, the condition of the above obligation is, that we, the above-bound New Orleans, Mobile and Chattanooga Railroad Company and Thomas B. Lee, security, will well and truly pay to the said Pontchartrain Railroad Company, the defendants in said suit, all such
278 damages as said company may recover against us, in case it should be decided that the injunction was wrongfully obtained.

(Signed) W. S. WILLIAMS,
Treasurer N. O., M. and C. R. R. Co.

(Signed) THOS. B. LEE.

Signed, sealed, and delivered in presence of—

(Signed) R. W. ROGERS.

Writs of injunction issued with supplemental petition, May 2, 1870.

State of Louisiana, eighth district court for the parish of Orleans.

N. O., M. AND C. R. R. CO. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

The State of Louisiana to the Pontchartrain Railroad Company, through its proper officer, George Pandely, C. A. Whitney, and A. C. Hutchison, greeting:

You are hereby commanded, enjoined, and restrained, in the name of the State of Louisiana and of the eighth district court for the parish of Orleans, from obstructing, hindering, or in any way interfering with the laying of the tracks of the New Orleans, Mobile and Chattanooga Railroad Company upon grounds specified in the maps of survey now on file in this office, and the spaces of ground mentioned in the first section of the act of the 21st of February, 1870, of the general assembly of the State of Louisiana, being the central banquette or walking avenue which lines the space of ground reserved by Mr. Bernard Marigny, being two strips of ground twelve feet in width, one upon each side of and adjoining the land said to be owned by the Pontchartrain Railroad Company, in the central portion of Elysian Fields street, with requisite curves to and from the same, from the levee and from Claiborne street, and you are also restrained from hindering and obstructing the removal of any structure or material thereon that may in any manner obstruct or hinder or impair the location of tracks, maintenance, construction, and use of the New Orleans, Mobile and Chattanooga Railroad Company.

And you are so enjoined and restrained until the further order of this honorable court.

Witness the honorable Henry C. Dibble, judge of our said court, the second day of May, in the year of our Lord eighteen hundred and seventy, and in the ninety-fourth year of the Independence of the United States.

[SEAL.] (Signed) JOSHUA CORPREW,
Dy Clerk.

Sheriff's return on writs of injunction.—Filed May 3, 1870.

Received May 2, 1870, and on the same day, at the hour of half past six a. m. or thereabouts, served true copy of within injunction on the Pontchartrain Railroad Company, by leaving the same at the office of said company, corner of Delta and Lafayette streets, in the hands of Mr. W. J. Carter, secretary; the president being absent at the
279 time of said service. And all facts connected with said service and stated above were ascertained by interrogating said W. J. Carter.

Returned same day.

(Signed) HENRY BEMS,
Dy Sheriff.

Sheriff's return on writ of injunction served on George Pandely.—Filed May 3, 1870.

Received May 2, 1870, and on the same day served, at the hour of

half past six a. m. or thereabouts, a true copy of within injunction personally on George Pandely, superintendent of the Pon'chartrain Railroad.

Returned same day.

(Signed) J. F. DICK,
Dy Sheriff.

Sheriff's return on writs of injunction served on C. A. Whitney and A. C. Hutchison.—Filed May 3, 1870.

Received May 2, 1870, and on same day served copies of within writ of injunction on C. A. Whitney and A. C. Hutchison, each personally.

Returned May 2, 1870.

(Signed) J. W. F. LEECH,
Dy Sheriff.

Citations issued with supplemental petition.

State of Louisiana, eighth district court for the parish of Orleans, in the city of New Orleans.

N. O., M. AND CHAT. R. R. CO. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

MR. GEORGE PANDELY:

You are hereby summoned to comply with the demand contained in the supplemental petition, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the eighth district court for the parish of Orleans, within ten days after the service hereof.

Witness the honorable Henry C. Dibble, judge of our said court, this 2d day of May, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.] (Signed) J. CORPREW,
Dy Clerk.

Sheriff's return on citations accompanying supplemental petition.—Filed May 4, 1870.

Received May 2, 1870, and on the third day of the same month and year served copy of within citation and accompanying supplemental petition on George Pandely, one of the defendants herein, by leaving the same at his domicil, No. 415 Decatur street, between Marigny and Mandeville streets, in the hands of Mary Lewis (colored servant), a person apparently over the age of fourteen years, living and residing at the same domicil, and whose name and other facts connected with the service I learned by interrogating her, the said defendant being absent from home at the time of said service.

Returned same day.

(Signed) P. A. FORTIER,
Dy Sheriff.

280 *Sheriff's return on citation served on A. C. Hutchison.—Filed May 5, 1870.*

Received May 3, 1870, and on the fourth day of the same month and

year served copy of the within citation and accompanying supplemental petition on A. C. Hutchison, one of the defendants herein, by leaving the same at his domicil, No. 636 St. Charles street, in the hands of Constance James, a negro woman, apparently above fourteen years of age, living and residing in the same domicil, whose name and other facts connected with this service I learned by interrogating her, the said Hutchison being absent from home at the time of said service.

Returned same day.

(Signed) PH. LACOSTE,
Dy Sheriff.

Sheriff's return on citation served on C. A. Whitney.—Filed May 5, 1870.

Received May 3, 1870, and on the fourth day of the same month and year served copy of the within citation and accompanying supplemental petition on C. A. Whitney, one of the defendants herein, in person.

Returned same day.

(Signed) PH. LACOSTE,
Dy Sheriff.

Rules to bond discharged.—Extract from minutes, May 2, 1870.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

In the matter of the rule taken by the City of New Orleans on the plaintiffs to dissolve the injunction herein, and the motion to bond, also taken by the City of New Orleans, submitted to the court for determination, the court, for the reasons orally assigned in open court, considering the law and the evidence to be in favor of the defendants in said rules—

It is ordered that the rule taken by the City of New Orleans April 14, 1870, to dissolve the injunction herein be discharged, and that the motion by said City of New Orleans, of date of 13th of April, 1870, to set aside the said injunction, under the provisions of article 307, Code of Practice, without bond, as permitted to said city in such cases, be overruled.

Motion to bond.—Filed May 3, 1870.

N. O., M. AND CHAT. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

On motion of Lea, Finney & Miller, of counsel for Pontchartrain Railroad Company, and on showing the court that the order of injunction herein granted, on the prayer of the plaintiff, against the defendants on the thirtieth of April, 1870, and the writ of injunction issued in pursuance on the second of May, 1870, were so granted, signed improvidently and irregularly, by surprise upon these defendants, it appearing to the court that a repugnant injunction, before the creation of this honorable court, involving the same matters, had been granted by the seventh district court, parish of Orleans, in favor of the Pontchartrain Railroad Company and against the plaintiff; that a motion by the plaintiff on the defendant, in suit No. 21 on the docket of

281 this court, to show cause why the said suit in the seventh district court, in which said injunction issued, should not be transferred to this court, the injunction therein issued declared null and inoperative; why an injunction should not issue in favor of the plaintiffs of the same force and effect as that granted on the 30th day of April and undetermined, as appears by the record of said suit No. 21, in which the New Orleans, Mobile and Chattanooga Railroad Company are defendants; and it further appearing to the court that the said injunction will not work an irreparable injury to the plaintiff, nor the acts prohibited by said injunction work an irreparable injury to the plaintiff—

It is ordered by the court that the plaintiff show cause on Friday, at ten o'clock a. m., why the said injunction granted on the thirtieth day of April and issued on the second day of May, 1870, should not be dissolved, upon defendants executing their obligation in favor of the plaintiffs, with good and solvent security, in the sum of dollars, conditioned that they, the defendants, will deliver the property in dispute in the same state it was at the moment of issuing the injunction, and will, besides, pay to the plaintiffs all damages they have sustained by the acts of the defendants complained of, if a definitive judgment be rendered against them, the said defendants, in this suit.

Sheriff's return on rule.—Filed May 5, 1870.

Received May 3, 1870, and on the fourth day of the same month and year served two copies of the within rule, as follows, viz, one on the New Orleans, Mobile, and Chattanooga Railroad Company, plaintiff herein, by leaving the same at the office of the said company, room No. 7, Gallier's court, corner of Common and Carondelet streets, in the hands of Henry Van Vleck, its chief engineer, who informed me that the president and secretary were both absent from the office at the time of said service; and one on the City of New Orleans, defendant herein, through the honorable B. F. Flanders, mayor of said city, in person.

Returned same day.

(Signed) PH. LACOSTE,
Dy Sheriff.

Affidavit.—Filed May 4, 1870.

State of Louisiana, eighth district court for the parish of Orleans.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 19.

We, the president and treasurer of the plaintiff in this suit, and with full authority to control its affairs in this city, do declare that at the date of this suit that we were respectively absent in Mobile, Alabama, and that this suit was properly sued out by the agent whose name is attached to the affidavit and bond. The matters relative to the suits connected with the laying down of the tracks and removing of the obstructions and preventing interruptions were left in his special charge in that absence, and the signing of the bond and the making of the affidavit was authorized, and is hereby recognized as fully within

282 the authority at that time given and the duty at that time imposed upon him, and that he acted under the authority so given.

(Signed) JAMES A. RAYNOR.
(Signed) WM. S. WILLIAMS.

NEW ORLEANS, *May* 4, 1870.

Sworn and subscribed before me to-day.

(Signed) A. SHELLEY,
Second Justice of the Peace.

Answer to motion to bond and file documents.—Filed May 6, 1870.

State of Louisiana, eighth district court for the parish of Orleans.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 19.

The plaintiff in this cause, in answer to rule of the Pontchartrain Railroad Company, a defendant in this suit, says: They admit that the Pontchartrain Railroad Company, on the 21st of February, 1870, without rule or notice to the plaintiff, sued out an injunction in the seventh district court, a copy of which they attach hereunto as "A."

They further answer that an act of the general assembly of the same date had passed both houses of the general assembly, and on that day was approved by the governor, and that the only cause for the apprehension and trepidation contained in the petition for injunction was the anticipated approval of that act, in the opinion and belief of these respondents; and that before that time no act had been done to disturb the said parties.

The respondents further answer that on the third of March, 1870, they filed their answer, and applied for a rule to dissolve said injunction, and to have an injuction in their behalf, which rule was continued to the twenty-first March, 1870, and then argued; these respondents not urging their motion for injunction in argument, and submitting, on argument, the case to the court.

That on the 15th of March, 1870, the eighth district court was established by the act of the general assembly of that date, and that court was not organized until the twenty-third and twenty-fourth of that month, by the appointment and qualification of the officers of the same. (Exhibit "B.")

These respondents admit that the cause has been under advisement from thence hitherto, and, so far as they are informed, the said seventh district court has not made any decision in the case, but holds the same under its jurisdiction and control.

They admit that they filed suit No. 21 in this court; the dates and averments will appear therefrom, and they refer to the same. They affirm that they were desirous to settle the cause amicably with the defendants, being a local company of long standing, and being willing to adjust with them upon the concession of some claim, whether real or fancied; and to relieve themselves from all litigation and dispute by a sacrifice of their own better claims, through their counsel, submitted to the attorney of the said Pontchartrain Railroad Company the letter herewith attached, marked "C," and within three days was informed that the proposition was rejected, finally rejected. The correspondence is sub-

283 mitted. (Exhibit "C.") But within a day or two after this communication the respondents were informed that Charles Morgan was the principal stockholder of the Pontchartrain Railroad Company, owning two-thirds or three-fourths of the same, and that a general settlement might be made of all the matters on terms communicated by him; and a meeting was proposed and held, at which the president of the company ad interim, George Pandely, Charles A. Whitney, a director of the said company, and who were also agents and clerks of the said Morgan, as appears by affidavits in this cause, and the matters were discussed; and the interview with these defendant officers terminated by a specific and decided declaration that there was nothing more to be said relative to either matter involved—these respondents not meeting favorably the propositions concerning the said Charles Morgan individually, and only repeating the proposition in the letter marked "C." These respondents finding that the party Chas. Morgan was really controlling all the subjects of contradiction and opposition and difference, and that Pandely, Whitney, the Pontchartrain Railroad Company, were only instruments at his control, to be put forward by him, concluded that it was their right and duty to place this last-named instrument in the same suit which had been previously commenced in this court against Morgan and his other agents, and to examine, with all them, the authority and title of the said Charles Morgan and others to set themselves up in a position adverse to the execution of a public law of this State, to the enjoyment of the rights and authorities they confer, and that his interest in doing so might be discovered and exhibited; and with this view the supplemental petition was filed the day of the date of this interview and discussion. These respondents disclaim all purpose of exhibiting any disrespect or want of proper regard for the seventh district court. When this court received the cause alluded to, it had jurisdiction; when the answers were filed in that suit, it had jurisdiction, and when the cause was argued the act of the sixteenth of March had been promulgated, but the court had not been organized that it provided for, and opinion was not settled as to the scope and operation of the act; the fact was apparent that on the motion in reconvention no order could be made.

But then respondents say that the effect of the said act was and is to divest the said seventh district court of all jurisdiction of the writ of injunction, and of power to dispose and to continue on; and that the writ abated, and the injunction became inoperative so long as the cause remained in the said court, and that all proceedings thereon must be nugatory. These respondents aver that the eighth district court is a legal court, possessed of all the jurisdiction, whether exclusive or concurrent, that the act confers, and that no other court in this parish has any jurisdiction to issue or maintain a jurisdiction over writs of injunction in cases like the present one; and that the defendants were under no necessity nor were in any way required to withhold from this court an original application corresponding to that which they had made on the eighth of March last in that court, in the cause aforesaid. And that the effect of their application had been notified to the said court by furnishing a copy of the injunction in this case to the officers of the said court.

These respondents deny that they ever had any intention to obstruct, hinder, or interfere with the said Pontchartrain Railroad Company, their property or privileges. They were occupying a portion of the public streets of the State, under a permission to do so in so far as the public should not suffer inconvenience, under an authority from the mayor of

the city, by a power given to him by city ordinance. This per-
284 mission was withdrawn by the act of twenty-first of February, 1870, and the ordinance annulled, and all authority was given to the respondents to occupy the same portion of the public domain.

Before this grant to the respondents became operative, but while its allowance was under consideration by the governor of the State, and on the same day that he approved it, the Pontchartrain Railroad Company sought judicial aid—not disclosing in their petition what was the exact cause of their apprehensions.

The act itself, when approved, was an answer to the petition, and places the said Pontchartrain Railroad Company under the dominion of the 857th article of Civil Code. From that date they became possessors of public places without authority, and the possession was a nuisance and an offense, under that article.

These defendants deny that the Pontchartrain Railroad Company have any power to give a bond for restitution, because their possession is a manifest disobedience of the general law, as well as of the particular enactment of the twenty-first of February, 1870.

And now they pray the dismissal of the rule, at the cost of the plaintiff in the same.

CAMPBELL, SPOFFORD & CAMPBELL,
For Respondent.

Affidavit.

STATE OF LOUISIANA,
Parish of Orleans:

Before me, a justice of the peace for said parish, came James A. Raynor, president of the New Orleans, Mobile and Chattanooga Railroad Company, and Wm. S. Williams, treasurer of the same company, who make oath and say that the foregoing answer is true in substance and matter of fact.

(Signed) JAMES A. RAYNOR.
W. S. WILLIAMS.

NEW ORLEANS, *May* 6, 1870.

Sworn and subscribed to before me to-day.
[SEAL.] (Signed) A. SHELLEY,
Second Justice of the Peace.

Writ of injunction in suit 2757, seventh district court.—Exhibit A.—Filed May 6th, 1870.

State of Louisiana, seventh district court for the parish of Orleans.

THE PONTCHARTRAIN R. R. Co. *vs.* N. O., M. AND C. R. R. Co. } No. 2757.

The State of Louisiana to the New Orleans, Mobile and Chattanooga Railroad Company, its officers and agents, greeting:

You are hereby commanded, enjoined, and prohibited, in the
285 name of the State of Louisiana and of the seventh district court for the parish of Orleans, from interfering with or disturbing the Pontchartrain Railroad Company in the use, possession, and enjoyment of the following-described property, to wit:

First. To certain strips of land, each twelve feet in width, one upon each side of and adjoining the certain strip of land in the central portion of Elysian Fields street, running fifty French feet wide, extending from the river Mississippi to the elbow of canal Marigny; which fifty feet were acquired from Bernard Marigny by said Pontchartrain Railroad Company by act before F. De Armas, notary, of date of the twenty-third of February, 1830.

Second. Said strip of land of fifty feet wide, acquired from B. Marigny as aforesaid.

And you are further prohibited and enjoined from locating and constructing the tracks of the New Orleans, Mobile and Chattanooga Railroad Company along and upon said two strips of twelve feet in width each, or along and upon said strip of fifty feet wide, said two strips extending the length of said strip of fifty feet, and from interfering with or disturbing in any manner the running of the engines and the cars of the Pontchartrain Railroad Company upon their tracks, and from interfering with or disturbing the said Pontchartrain Railroad Company in the use, possession, and enjoyment of its depots and buildings used for and in connection with its railroad.

And you are further prohibited and enjoined from applying to any other court or authority in the premises, or relating to the subject-matter hereof, or in support of any pretensions you may set up to said strips of land; or to interfere with the said Pontchartrain Railroad Company in the running of its engines and cars, or with its use, possession, and enjoyment of its depots and buildings.

And you are so enjoined, and until the further order of this honorable court.

Witness the honorable Thomas Wharton Collens, judge of our said court, this twenty-first day of February, in the year of our Lord one thousand eight hundred and seventy, and in the ninety-fourth year of the Independence of the United States.

[SEAL.] (Signed) H. J. DUSSOR,
Dy Clerk.

A true copy.

CLERK'S OFFICE, *May* 4, 1870.

[SEAL.] (Signed) H. J. DUSSOR,
Dy Clerk.

Certificate of secretary of state, annexed to answer to motion to bond.—Exhibit B.—Filed May 6, 1870.

I hereby certify that act No. 2, entitled "An act to establish an additional district court for the parish of Orleans, to define the ju-
286 risdiction thereof, and to reorganize and determine the jurisdiction of the existing seven district courts for the parish of Orleans," passed by the general assembly of the State of Louisiana at its extra session begun and held in the city of New Orleans on the seventh day of March, A. D. 1870, appears from the original enrolled act on file in this office to have been approved by his excellency H. C. Warmoth, governor of the State of Louisiana, on the (16th) sixteenth day of March, A. D. 1870. And I further certify that said act was published in the official journal of said State on the seventeenth day of March, A. D. 1870, and that on the twenty-third day of March, A. D. 1870, Henry C. Dibble was commissioned by the governor of said State as judge, and Thomas Lynne as clerk of said court, and that said Dibble and Lynne

respectively qualified as such officers on the twenty-third and twenty-fourth days of March, A. D. 1870.

Given under my hand and the seal of the State of Louisiana this fourth day of May, A. D. 1870.

[SEAL.] (Signed) P. M. CRAVAITH,
Assistant Secretary of State.

Letter from J. A. Raynor, president, to J. A. Campbell, attorney.—Exhibit C, annexed to answer to motion to bond.—Filed May 6, 1870.

NEW ORLEANS, *April* 23, 1870.

Hon. J. A. CAMPBELL,
Counsellor, etc.:

DEAR SIR: In order to be able to construct that portion of the tracks of our road to be constructed in Elysian Fields street without inconvenience to the citizens using said street, or to the Pontchartrain Railroad Company, whose tracks are laid in part upon the ground belonging to said company in the central portion of said street and in part upon the central banquette of said street, our company would be pleased to arrange with the Pontchartrain Company for the removal of their tracks now upon the banquette, and seldom used, to the ground owned by said company in the centre of the street, where there is ample space and a grade already made for the track. The right of way along the central banquette in Elysian Fields street has been specially granted to our company by the State, but not wishing in any manner to subject the Pontchartrain Company to inconvenience or expense in the removal of their track from the banquette, our company proposes, and is willing and ready to agree, to transfer the side-track, now upon the banquette between Peters street and Josephine street, to the grounds of the Pontchartrain Company along the upper side of their main track, placing such side-track, when so transferred, in as good condition for use as it now is, and to slip their main track, now on the banquette between Josephine and Virtue streets, the five feet required to place it upon the grounds owned by the Pontchartrain Company, doing the work in such a manner that their use of the tracks shall not be interfered with. Or, if the Pontchartrain Company prefers to make such transfer itself, our company will pay to it the just and proper cost thereof. Or, if the Pontchartrain Company prefers to sell their side-track, now laid upon the banquettes (for which they seem to have little or no use), our company will buy it at its full value.

Will you please communicate with the representatives of the
287 Pontchartrain Company, with as little delay as possible, in regard to the matter, and advise me whether they are willing to assent to either of the proposals named herein.

Yours very truly,

(Copy.)
(Signed) JAMES A. RAYNOR.

Letter from J. A. Campbell, attorney, to J. A. Raynor, president.—Exhibit C.

NEW ORLEANS, *April* 26, 1870.

JAMES A. RAYNOR, Esq.,
Pres'd't O. G., M. and C. R. R. Co.:

DEAR SIR: Your letter of the twenty-third was referred by me to Messrs. Lea, Finney & Miller, attorneys for the Pontchartrain Railroad Company, with the request that a prompt answer might be given to it.

I have seen two of the members of that firm to-day, and they informed me the company had rejected your proposal—as I understand from them—finally.

Very respectfully, yours,

(Copy.)

(Signed) JOHN A. CAMPBELL.

Letter from G. Pandely, pres'd't P. R. R. Co., to J. A. Raynor, pres'd't.—Exhibit C.

OFFICE PONTCHARTRAIN R. R. Co.,
New Orleans, May 2, 1870.

JAMES A. RAYNOR,
Pres'd't N. O., M. and C. R. R. Co.:

SIR: Your attention is respectfully called to the enclosed copy of a resolution adopted this day by the directors of the Pontchartrain Railroad Company, in response to your communication under date of the 23d ultimo.

Very respectfully, etc.,

(Signed) G. PANDELY,
Pres'id't pro tem P. R. R. Co.

Resolution of board of directors of Pontchartrain R. R. Co.—Exhibit C.

OFFICE PONTCHARTRAIN RAILROAD Co.,
New Orleans, May 2, 1870.

At a meeting of the board of directors held this day, pursuant to the call of George Pandely, president pro tempore, for the purpose of considering what purports to be an offer of compromise from the New Orleans, Mobile and Chattanooga Railroad Company—

It was, after full debate, unanimously resolved to decline entertaining the proposition of the said company.

288 It was further resolved that the president pro tempore be instructed and authorized to communicate their conclusion to the president of the N. O., M. and C. R. R. Co.; suggesting, however, the willingness of this company to negotiate the terms of a compromise upon the following basis, to wit:

All the tracks of the Pontchartrain Railroad Company to remain where they are, the Chattanooga Railroad Company to be allowed to connect with them at or near Virtue street, placing a third rail on each track from that point to Peters street. The C. R. R. Co. to be allowed to use the levee track of this company as far as Custom-house street, by placing a third rail thereon, and this company to use the levee track of the Chattanooga Railroad Company in the same manner and to the same point; and inasmuch as the two tracks diverge at Custom-house street, the Chattanooga Railroad Company to secure to the Pontchartrain Railroad Company a strip, thirty feet wide, on the city side of the two squares bounded by Common, Poydras, Delta and the Mississippi River, whereon to locate the tracks necessary to connect with its first district depot. (Extract from the minutes of the meeting of the board of directors of the Pontchartrain Railroad Company.)

[SEAL.] (Signed) WM. J. CARTER,
Secretary.

Ordinance A.—Ordinance approved March 15, 1830.—*Filed May 7th*, 1870.

STATE OF LOUISIANA, MAYORALTY OF NEW ORLEANS,
City Hall, 22d day of March, 1870.

(Copy.)

Attendu que la compagnie dite "The Pontchartrain Railroad Company" s'est addressée, en vertu de sa charte, au conseil de ville pour obtenir la permission de faire passer leur chemin dans de certaines rue de la ville de la N'lle Orléans; et attendu que le conseil de ville est d'opinion que cette enterprise tend à offrir de grandes avantages à la ville, et qu'en conséquence il doit lui donner tous les encouragements possible:

Résolu, que la compagnie dite "The Pontchartrain Railroad Company" est et demeure autorisée, pendant toute la durée de sa charte, à faire passer le chemin dite le "railroad" dans la rue, chemin ou promenade qui borde l'espace de terrein réservé par Mr. Bd. Marigny (et connu sous le nom de Canal Marigny) à l'époque où il établi l'ancien et le nouveau faubourg, à partir du coude du dite canal jusques à la rue de la levée, le tout sous la direction du voyer de la ville; et le maire est et demeure autorisée à permettre à la dite compagnie de faire usage de la dite rue, chemin ou promenade ainsi qu'il est dit ci-dessus, en tant qu'il n'en puisse résulter aucun inconvénient pour le public.

Résolu, que la portion de la dite rue, chemin ou promenade mise à la disposition de la dite compagnie de chaque côté du susdit canal ne pourra excéder douze pieds de large.

(Signed) C. GENOIS, *Recorder.*

Approuvé le 15 mars 1830.

(Signed) D. PRIEUR, *Mayor.*

289 I certify the above to be a true copy from the records on file in the office of the archives of the city.

[SEAL.] (Signed) JOHN W. OVERALL,
Secretary.

Testimony.—Filed May 7, 1870.

State of Louisiana, eighth district court.

N. O., M. AND C. R. R. CO.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 19.

Testimony of John L. Lewis.

JOHN L. LEWIS, being duly sworn, deposes and says:

The Pontchartrain Railroad Company was incorporated in 1830, and I think that it was in full operation from the foot of what is now Peters street to the lake.

I think the steam-cars commenced running in the fall of 1832. Horse-cars were run on it for some time previous.

No cross-examination.

Testimony of R. J. Evans.—Filed May 7th, 1870.

R. J. EVANS, being duly sworn, deposes and says:

I made the map now shown to me (map marked "Map B," and filed). I made this map by actual measurement. It is a correct map of the place, so far as I could make it. It shows the tracks of the Pontchartrain Railroad Company as they existed before being removed, and the tracks of the Chattanooga Railroad Company as laid down—the infringement of the Chattanooga Railroad Company upon the tracks of the Pontchartrain Railroad Company. This is a map of the yard of the Pontchartrain Railroad Company, and from Peters street to about midway to Moreau and Casacalvo. The track of the Chattanooga Railroad was laid within the last ten days.

Cross-examined:

The strip between the lines A, B, C, and D is fifty feet, French measure.

The line A B is the upper limit, and the line C D is the lower limit of the Marigny Canal.

"You have written freight platform torn down." It was a platform raised to level with the floor of the cars when standing on the tracks beside it. It was made of timber and planking. It was not covered. It was the lower strip of ground. The material of the road that was taken up I saw inside the depot and alongside the track. That is, material which I supposed to be the material. It was laid on the platform of the freight depot and alongside the track. There is no appearance of a canal on the ground represented by that plan. I have resided in this city about ten years; since I have been here—for about ten years—I have seen nothing of a canal on the spaces which I have laid down on this map. The condition of the ground which I have laid down on my map seems to be a space of ground which has been filled up with shells, etc., and used for a cotton-yard and the freight and switching purpose.

290 In going down to the lake, have you ever seen a canal called Marigny Canal used for commercial purposes?

No, sir; I have not had occasion to. There might have been one. There is a canal there which may have been used for commercial purposes. I saw a canal from Claiborne street, extending out some distance. There is a canal—this one of which I speak—on Elysian Fields street, extending some distance out from Claiborne, within the limits of the fifty feet French. There is a track extending from near Josephine street to the river, and side-tracks as you approach the river. The blue lines on the plan indicate the Pontchartrain tracks. Two of the three parallel tracks, and indicated by blue lines on the plan, are entirely on the space occupied by the canal. The third track is partially on that space. I made the surveys of the tracks as they now exist, on the day before yesterday.

Testimony of L. H. Pilie.

L. H. PILIE sworn:

I am a surveyor by profession; I have been living here nearly fifty-one years; I was on the first car run on the Pontchartrain Railroad; it was a horse-car; I know this was in 1831; it was then run with a locomotive in 1832; it ran from the old depot near the levee to the lake; the track of the railroad was then the same as it is now. I have ex-

amined the produced map and the ground yesterday; this is a correct map; I measured the ground yesterday. This represents the condition of things as they are now; it shows the condition of the Pontchartrain Railroad as it is left; the infringement of the track of the Chattanooga Railroad on the track of the Pontchartrain Railroad is shown. I am familiar with that locality; there was a canal there to my knowledge; there was a canal on Elysian Fields street from the river down to the elbow about Florida avenue, then extending on Marigny avenue to the bayou St. John; I have seen it since I was a child; I have often fished in it; part of it is still in existence, from Claiborne street to the elbow, and on Marigny avenue to the bayou St. John; that part on Marigny avenue to the bayou St. John was widened by the city of New Orleans, and is now used as a draining canal; this was partly filled up by the Pontchartrain Railroad Company when they built the road; then, some years ago, it was filled up when they were altering from St. John the Baptist street, going towards Claiborne street; and lately by order of the council, under an ordinance now in existence, they were about to fill up the greater part of it, having laid cross-ties; I was hauling dirt from the lake to fill it up when I was removed from office of city surveyor, in 1867. When I first knew the canal it was in use as a canal, but not for commercial purposes—only for drawing wood from the swamp. Mr. Marigny objected to people using it to draw fire-wood from the swamp; and at that time, thirty-odd years ago, the canal ran through what was known as the Marigny plantation, which was formerly Villau Dubriel's; it existed in 1754, and then the canal was called the canal "El Molino de Arroz;" there is a map of it in court; there was a mill on it—on what is called Peters street now.

Cross-examined:

All the lots which have names on them on the map of 1806 were sold by Mr. Marigny; this embraces the greater part of the lots on the map; I know of no lots still held by Mr. Marigny. Mr. Marigny is
291 dead; he died about eighteen months ago. The lots had been generally sold by Mr. Marigny in 1806; there is a portion of the lots on every square fronting on Elysian Fields street sold as early as 1806—from Moreau street to Goodchildren street. Mr. Marigny only used the canal to draw wood from the swamp; I have never seen any other use made of it, nor ever known any other; he continued to use it in the same manner after the Pontchartrain Railroad began to run, in 1832; but used it only a few years longer; it is hardly possible to say when he stopped using it. A portion of the canal on Elysian Fields street, from Peters street to beyond where it leaves Elysian Fields street, was filled up in 1830 to Casacalvo street; then, in 1837 or 1838, they did fill up that part from Casacalvo street for about two squares—to Craps street that is; in 1853 or 1855 they filled up that from Craps street to Goodchildren street, and reduced its width from Morales street to near Claiborne street; and in 1867 they were about, at the request of the city, filling up the whole of it as far as Solidelle street; they had thrown up the dirt and brought cross-ties. That portion from Peters street to the bend has not for thirty years been used for anything but to draw wood from the swamp.

(Defendants in rule here offered in evidence a copy of the "plan directeur du faubourg M. Bernard Marigny," made by L. Finiels, ingenieur, 16th March, 1806.)

Cross-examination continued:

This is the same as the plan of 1805, except that in this the ground

is divided only into squares, while in the other the squares are divided into lots. At the time the Pontchartrain Railroad Company was incorporated there was a canal in the centre and two walks fifty feet wide, one on each side; they were called avenue, rue, or promenade Elysee; and the twelve feet spoken of in the ordinance of the fifteenth of March, 1830, were part of the fifty feet; in 1830 there was a canal of forty-five feet in width from Peters street to Goodchildren street, and of about four feet in depth; and from Goodchildren street running back to the bayou St. John it was about twenty-five feet wide, with very little water; it was closed then; before it had had connection with the river, that I did not see. I suspect there must still have been wooden culverts passing to the river, but I do not know it; there was water in it; we used to fish in it and catch crawfish and patassats.

Note of evidence.—Filed 7th May, 1870.

N. O., M., AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 19.

MAY 7, 1870.

Note of evidence on rule to dissolve injunction.

Plaintiff in rule offers in evidence the charter of the Pontchartrain Railroad Company and all the acts amendatory thereto, all to be from printed copies.

Also a copy of the original ordinance of March 15, 1830, now filed, and marked "A."

Enter also the record (all the proceedings and orders and documents constituting the suit No. 21 of the docket of this court—
292 a complete transcript thereof.)

Also transcript of record in suit of the Pontchartrain Railroad Company vs. The New Orleans, Mobile and Chattanooga Railroad Company, No. 2757, of the seventh district court for the parish of Orleans.

Also the plans and maps filed by both parties in said suit No. 2757 in the seventh district court, to be produced when necessary.

Also an act of sale from Bernard Marigny to Pontchartrain Railroad Company, passed 23d February, 1820, before Felix De Armas, notary, copy to be found at pages 19 to 31, inclusive, in transcript of record offered in evidence in this suit. Record No. 2757 of the seventh district court.

NOTE.—All the above evidence will be found in the records of suits No's. 21 and 2757, also made a part of this record.

Rule to dissolve continued.—Extract from minutes, May 7, 1870.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 19.

The rule to dissolve the injunction herein issued, fixed for this day, came on.

Present: Campbell, Spofford & Campbell, for C. R. R. Co.; Lea, Finney & Miller, for P. R. R. Co., one of the defendants in the suit.

When, after hearing pleadings, evidence, and argument of counsel,

the matter was ordered to be continued to Thursday, 12th May, 1870, at 10 o'clock a. m., for further hearing.

Exception of the Pontchartrain R. R. Co.—Filed May 11, 1870.

Eighth district court, parish of Orleans.

N. O., M. AND C. R. R. CO. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

The defendants the Pontchartrain Railroad Company respectfully decline the jurisdiction of this honorable court, and except to its jurisdiction and to the supplemental petition herein filed by the plaintiff, on the following grounds, viz:

That before this suit was brought and before the enactment of the law creating this honorable court a suit was already pending and issue joined between the plaintiffs and these defendants in the honorable the seventh district court for the parish of Orleans, involving precisely the same matters and issues presented in the supplemental petition herein filed by the plaintiff, which said suit is still pending and undetermined in the said seventh district court. That before the enactment of the law creating this honorable court an injunction was granted by the said seventh district court in the cause aforesaid in favor of these defendants and against and served upon the plaintiffs, which has never been dissolved and is still in full force and effect, precisely repugnant to that herein granted and issued in favor of the plaintiffs, and involving precisely the same matters, property, rights of property, and franchises.

That the said seventh district court was at the time of the insti-
293 tution of the said suit therein and still is a court of competent jurisdiction to deal with and decide all the matters and issues therein involved, and to regulate and control all the proceedings and processes therein had and issued; and that since the creation of this honorable court the plaintiffs have voluntarily submitted to the jurisdiction of the said seventh district court in said cause, and have never excepted thereto; all of which will more fully appear by reference to a duly certified transcript of said cause already filed in this cause, to which reference is made for greater certainty. That none of the other defendants besides the Pontchartrain Railroad Company have any interest in the matters and issues presented in the said supplemental petition.

Wherefore these defendants plead the pendency of said suit and proceedings in said cause in said seventh district court in abatement of this suit.

2d. That before the filing of the supplemental petition herein there had been instituted by the plaintiffs a suit against these defendants and their codefendants A. C. Hutchison, C. A. Whitney, and George Pandely, in this same court, being No. 21 on the docket, involving the same matters and issues presented in the said supplemental petition, which suit is still pending and undetermined, and that in that cause an application by the plaintiffs for an injunction of the same force and effect as that issued herein is still pending and undetermined in a rule to show cause, to which rule exceptions and an answer have been filed by these defendants; all of which will more fully appear by the record in said cause No. 21, already offered in evidence herein, the pendency of which suit and the proceedings therein these defendants plead in abatement of this suit.

3d. That these defendants are strangers to all the matters and issues involved in the original petition, and have no sort of interest therein; have never been made parties thereto or cited therein; and that the matters set forth in the original petition are entirely distinct and different from and disconnected with those presented in the supplemental petition, and that thus the plaintiffs have, in their original and supplemental petition, improperly cumulated entirely distinct and different causes of action against Charles Morgan and other defendants, in which this defendant has no interest or concern, with special causes of action and matters in which these defendants have an interest. And that thus there has been a misjoinder of causes of action and parties by which these defendants, unless corrected by the order of this honorable court, will be greatly prejudiced in their defence, and exposed to great costs, trouble, loss of time, and annoyance, and complication and confusion in conducting their defence.

Wherefore these defendants pray to be hence dismissed, with their costs, and for general equitable relief.

(Signed) LEA, FINNEY & MILLER,
Attorneys.

Exception of A. C. Hutchison and C. A. Whitney.—Filed May 11, 1870.

Eighth district court, parish of Orleans.

N. O., M. AND CHAT. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

294 The defendants Charles A. Whitney and Alexander C. Hutchison except to the original and supplemental petitions herein filed, and for grounds of exception show—

That they have no interest or connection with the Pontchartrain Railroad Company, and are strangers to all the matters and things set forth and pleaded in the supplemental petition, and have no interest or connection with the matters and things pleaded in the original petition, except that they are salaried clerks and employés of Charles Morgan; that this cause, so far as Charles Morgan, the real party in interest, is concerned, has been removed to the United States circuit court for the district of Louisiana, and that the plaintiffs have improperly cumulated a wholly unfounded suit against these defendants with a suit against the Pontchartrain Railroad Company, embracing a wholly distinct and different cause of action, and thus greatly prejudiced these defendants and exposed them to great costs, loss of time, annoyance, and complication in making their defence.

Wherefore these defendants pray to be hence dismissed, with their costs.

(Signed) H. J. LEOVY & F. A. MONROE,
Attorneys for Hutchison & Whitney.

Exception of George Pandely.—Filed May 11, 1870.

Eighth district court, parish of Orleans.

N. O., M. AND CHAT. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

The defendant George Pandely excepts to the jurisdiction of this honorable court and to the original and supplemental petitions filed herein, and for grounds of exception represents to your honor that he has no interest in the matters and things set forth in said petitions, except that he is a salaried clerk of both Charles Morgan and the Pontchartrain Railroad Company, and an officer of the latter company, and he adopts and reiterates the exceptions pleaded and filed herein by the Pontchartrain Railroad Company and Alexander C. Hutchinson and Charles A. Whitney, co-defendants.

Wherefore this defendant prays to be hence dismissed, with costs, and for general equitable relief.

(Signed) LEA, FINNEY & MILLER,
Attorneys.

Rule continued.—Extract from the minutes, May 12, 1870.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

The rule in this matter, fixed for this day for trial, was ordered to be continued to Thursday, the 19th instant, at 10 o'clock a. m.

295 *Continuance—Extract from the minutes of* 17*th May*, 1870.

N. O., M. AND CHAT. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

This case, fixed for trial for this day, was ordered to be continued, with preference.

Rule continued—Extract from the minutes, May 19, 1870.

N. O., M. AND CHAT. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

The rule in this matter, fixed for this day for trial, was ordered to be continued indefinitely.

Continuance—Extract from the minutes of June 1, 1870.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

This case, fixed for this day for trial, was ordered to be continued to Wednesday, June 15, 1870, at 10 o'clock a. m.

Continuance—Extract from the minutes of June 15, 1870.

N. O., M. AND CHAT. R. R. Co. vs. CITY OF NEW ORLEANS ET ALS. } No. 19.

This case, fixed for this day, was ordered to be continued indefinitely.

Answer of the City of New Orleans—Filed July 26, 1870.

Eighth district court, parish of Orleans.

N. O., M. AND C. R. R. R. Co. vs. CITY OF NEW ORLEANS ET ALS. } No. 19. Demand in reconvention.

And now before the court comes the City of New Orleans, and for answer to the petition herein filed and served, she denies each and every allegation therein contained; and upon the trial of this cause will require strict and legal proof thereof.

And for further special answer, she denies that the said plaintiff has ever acquired a right or title to, or is the owner in fee or otherwise, of the landed estate or immovable property, or any part or portion of the ground claimed by the plaintiff, or referred to in the petition.

And for further answer this respondent says:

That all that portion of the real estate or ground claimed by the
296 plaintiff, situated above Canal street, forms a part of the batture lying in the old faubourg of St. Marie, and that on or about the 20th day of September, 1820, a certain act was entered into by and between Edward Livingston and other riparian proprietors and the City of New Orleans, wherein and whereby the entire alluvion or batture in front of the aforesaid suburb St. Marie, and the accretion thereafter to become attached to the same, were dedicated to the public use and the purposes of business and commerce; and upon the express understanding and condition that the same should thereafter remain and continue a locus publicus, out of commerce; and not to be affected by any adverse claim or grant which might be set up against the same.

That for many years anterior to the authentic act of dedication above referred to, and more than fifty years previous to the passage of the acts of the legislature of the State of Louisiana referred to in plaintiff's petition, certain riparian proprietors owning property in the old faubourg St. Marie, without any particular form or ceremony, converted the entire batture in front of such suburb into a locus publicus, and set the same apart for the use of the public, composed almost entirely of citizens of the United States, upon the condition that the batture thus informally dedicated should remain and continue to be solely appropriated for that purpose.

And this appearer further shows that the aforesaid batture for more than fifty years prior to the acts and doings of the plaintiff hereinafter set forth and complained of, and up to the time of the committing of such acts and doings, was used and enjoyed as a locus publicus, and in the interests of business and commerce; and that the same, and particularly that portion thereof referred to in plaintiff's petition, is now needed for public use and to meet the exigencies and demands of the business and commercial relations of the city of New Orleans, and the

wants of the community at large, composed mostly of citizens of the UnitedStates.

Further, this respondent says, that all that portion of the real estate or ground claimed by the plaintiff, commencing from the lower line of suburb St. Marie at Canal street, and running thence down to Elysian Fields street, forms a part of the batture lying in front of the "Old city of New Orleans," as this respondent will show upon the trial of this cause.

That on the sixth day of September, 1717, a charter was granted by the King of France to a corporation styled the "Western Company;" that under the auspices of the said company, the ground where the old city of New Orleans now stands was selected as a place for the principal settlement of the province, and the foundation of the city was laid; and that in 1724 and 1728 all the batture lying in front of the old city of New Orleans was laid off as a quay, and thus, and otherwise, was dedicated as a locus publicus, and as common property, to the use of which all of the inhabitants of the city of New Orleans, and even strangers, became entitled.

That upon the original plans of the city, as made by the King of France at its foundation in the years 1724 and 1728, the aforesaid batture, lying in front of the old city of New Orleans, and extending from the front row of buildings down to the river edge, was recognized as a locus publicus; that such batture was not only needed as a place to be used in common, but has been in the uninterrupted possession and actual enjoyment of the inhabitants of the city of New Orleans, composed almost entirely of citizens of the United States, and strangers, as a place of public use from the years 1724 and 1728 down to the com-
297 mencement of this suit; and that lots and squares of ground abutting upon such batture have been sold and bought, and buildings have been erected upon the said squares and lots, in reference to the said batture then being and forever after remaining a place dedicated to common use.

This respondent, further answering, says that all that portion of ground or real estate claimed by the plaintiff, and over which they seek to run their road, extending from the point of intersection of the batture with Elysian Fields street back to the point where the last mentioned street intersects with Claiborne street, has been dedicated by ordinances of the said city of New Orleans, and otherwise, as parts of a public street or highway, and for the convenience and use of the inhabitants of the said city and others; and that the same has been possessed, used, and enjoyed as a street, highway, or public place for more than thirty years before the commencement of the present suit.

And this respondent further says that the construction of the New Orleans, Mobile and Chattanooga Railroad by the contemplated route through the said city of New Orleans, and the running thereon passenger and freight trains, particularly when propelled by a locomotive or steam engine, and the enjoyment of the grants and privileges set forth and contained in the several acts of the legislature referred to in plaintiff's petition, will prevent the use of the batture and Elysian Fields street by the public as a locus publicus and highway; will destroy the object of the dedications as hereinabove set forth; and will give the plaintiff the exclusive use of ground the use of which alone belongs to and is now needed by the inhabitants of the said city of New Orleans and others.

And this respondent, for further answer, says that, in and by the acts of the legislature referred to in plaintiff's petition, certain property or

real estate belonging to certain individuals unknown to this respondent, and certain other property or real estate belonging to this respondent, and lying at different points along the route of the said plaintiff, from its commencement at or near Calliope street to its terminus at the rear limits of the city, have been taken from the owners thereof and bestowed upon the said plaintiff; and that the said plaintiff, acting under the grants and privileges pretended to have been conferred by the aforesaid acts of the legislature of Louisiana, has appropriated to itself the aforesaid property, and has taken and applied the same to its own use and benefit, the value of the property thus pretended to be given to, and actually taken by the said plaintiff, belonging to this respondent, not being less than five hundred thousand dollars.

And this respondent, further answering, says that the State of Louisiana had no right, title, interest, or claim as owner, to any portion of the property, grounds, or real estate referred to in plaintiff's petition; and had no right to pass any law divesting any of the rights of the owners of said property, or of the public, in any other way than to authorize property to be taken for purposes of public utility and for adequate compensation, by exercise of the right of eminent domain.

That the acts of the legislature particularly referred to in plaintiff's petition, and the enjoyment of the grants and privileges therein pretended to be granted and conferred, will give the plaintiff the ownership and control of certain property belonging to this respondent and others, without compensation, and will moreover give to them the possession of a locus publicus, the right to the use and enjoyment of which is in the public, composed almost entirely of citizens of the United States; and will thereby, and otherwise, interfere with and impair rights vested in and contracts in favor of said owners and the public,
298 composed almost entirely of citizens of the United States; that for these and other reasons, the several acts of the legislature of the State of Louisiana aforesaid, and the pretended grants and privileges to the New Orleans, Mobile and Chattanooga Railroad Company, referred to in plaintiff's petition, and by said plaintiff relied on to maintain the present action, were made, passed, and given in violation of sec. 10, art. 1 of the Constitution of the United States; 1st sec. of the 14th amendment to the Constitution of the United States; sec. 20, art. 6 of the constitution of Louisiana adopted in 1812; art. 109 constitution of said State adopted in 1845; art. 105 constitution of said State adopted in 1852; art. 109 constitution of said State adopted in 1864, and art. 110 constitution of said State adopted in 1868; and are therefore absolutely null and void, and without effect.

And this appearer further says, that the several acts of the legislature referred to in the plaintiff's petition are unreasonable, oppressive, and in disregard of the lawful and constitutional rights of this respondent and of the owners and the public at large of the city of New Orleans.

This respondent, further answering, says that the acts and doings of the said plaintiff in taking possession of and appropriating to their own use the real estate or ground over or through which their road has been and is contemplated to be run, are in other respects in violation of this respondents' legal and constitutional rights, and are without sanction or authority in law or equity.

Further, this appearer shows unto the court, that the New Orleans, Mobile and Chattanooga Railroad Company, improperly, unlawfully, and in violation of the provisions of the Federal and State constitutions hereinabove referred to, and in violation of the legal and equitable

rights of this respondent, unless enjoined by the court, will take sole and absolute control and possession of all the property, real estate and grounds referred to in the petition, and will enclose and occupy a large portion of the same for its own exclusive use and purposes; all of which will more fully appear from the averments in plaintiffs' petition contained, and from the evidence to be produced on the trial of this cause.

Wherefore this respondent prays that the plaintiff's petition and injunction be dismissed at its costs; and that upon the original action judgment may be rendered in favor of this respondent and against the said plaintiff.

And this appearer, now reconvening and becoming plaintiff in reconvention, prays that the New Orleans, Mobile and Chattanooga Railroad may be cited to appear and answer this demand in reconvention; that upon the allegations and averments hereinabove set forth judgment in reconvention may be rendered in favor of this appearer and against said company; that the said company may be required to remove any and every enclosure, work, and obstruction, of every kind, name, and nature, placed upon the property, grounds or real estate referred to in the petition, and adjudged and decreed to put the said property, ground or real estate in the same condition which it had before being taken into the possession of or interfered with by the said company; that the said company be perpetually enjoined and restrained from preventing or hindering in any way or manner, the property, ground or real estate the title to which is in this respondent from being used by this respondent as owner; and be further enjoined and restrained from preventing or hindering such portion of the said property, ground or real estate as has been dedicated to public use from being used and enjoyed by and for the benefit of the public at large as a locus publicus, and for
299 the use and purposes of public business and commerce; that this appearer recover of the plaintiff all such damages as this respondent has sustained, with interest according to law; that in the event final judgment be not entered restraining the plaintiff as hereinbefore prayed for, and judgment be rendered in its favor, maintaining the said company in the possession and control of the real estate and grounds referred to in the petition, in whole or in part, and in that event only, respondent may have judgment for the full value of her property and rights appropriated by the New Orleans, Mobile and Chattanooga Railroad Company, with damages in accordance with law; that appearer's rights against the surety on the injunction bond be reserved; that respondent recover costs, and have general relief in the premises.

(Signed) GEO. S. LACEY,
City Attorney.

Agreement to fix cases—Filed December 7, 1870.

It is agreed that the following suits in the eighth district court, viz:
No. 4—N. O., M. and C. R. R. Co. vs. City of New Orleans et als.;
No. 345—State of Louisiana vs. City of New Orleans;
No. 19—N. O., M. and C. R. R. Co. vs. City of New Orleans et. als.;
No. 27—N. O., M. and C. R. R. Co. vs. City of New Orleans;
No. 339—B. H. Flasspoller vs. N. O., M. and C. R. R Co.,

be fixed for trial and taken up together on the ninth day of January, 1871.

(Signed) MILES TAYLOR AND LEOVY & MONROE.
" GEO. S. LACEY, *City Attorney.*
" COTTON & LEVY.
" LEA, FINNEY & MILLER,
" J. A. CAMPBELL,
Attorney for N. O., M. and C. R. R. Co.

NEW ORLEANS, *December* 6, 1870.

Answer to reconventional demand of City of New Orleans—Filed January 9, 1871.

N. O., M. AND CHAT. R. R. Co. *vs.* CITY OF NEW ORLEANS (RECONVENOR). } No. 19.

The defendants affirm their original petition, and deny the allegations of the reconvention, and pray as they have prayed in their petition.

(Signed) J. A. CAMPBELL,
For Defendant in Intervention.

Continuance—Extract from the minutes of January 9, 1871.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

This case, fixed for this day for trial, was ordered to be continued to to-morrow at 11 o'clock a. m.

300 TESTIMONY—FILED JANUARY 10, 1871.

Eighth district court.

N. O., M. AND CHAT. R. R. Co. *vs.* CITY OF NEW ORLEANS, GEO. PANDELY ET ALS. } No. 19. Testimony—January 10, 1871.

On the exception on the part of the Pontchartrain Railroad Company, counsel offers in evidence the records of the New Orleans, Mobile and Chattanooga Railroad Company vs. Pontchartrain Railroad Company, being suit No. 21 of the docket of this eighth district court, parish of Orleans.

Also the record of the case of the Pontchartrain Railroad Company vs. New Orleans, Mobile and Chattanooga Railroad Company, transferred to this eighth district court from the seventh district court, and standing as No. 116 of the docket of this eighth district court.

(The exception is now submitted, and taken under advisement by the court.)

The plaintiff offers in evidence the act of the legislature incorporating the plaintiff, and the various acts of the legislature of Louisiana relative to this corporation referred to in the petition, dated respectively 19th August, 1868, 17th February, 1869, and 21st February, 1870.

Also the maps referred to and forming part of the petition.

Also certificate that these maps have been filed in the office of the secretary of state, marked "AB."

Also agreement between George Pandely and others and plaintiff that defendants are agents and not owners, etc., now filed and marked "AC."

It is agreed that either the plaintiff or the City of New Orleans shall have the right to procure certified copies of such parole testimony taken in the suit of Burdo vs. New Orleans, Mobile and Chattanooga Railroad Company, as they may deem necessary, in the seventh district court, as between these two parties only, and the same shall have the same effect as though the witnesses were sworn in this case.

The City of New Orleans offers in evidence the admission marked "AD," now filed.

Also compromise of 20th September, 1820, marked "AE," now filed.

Also compromise of 30th June, 1851, marked "AF," now filed.

Also map marked "AG," now filed.

Also map locating the railroad, marked "AH," now filed.

Also map marked "AI," now filed.

It is admitted that these maps are taken from the archives of the city, and show the location of the Chattanooga Railroad under the acts of the legislature.

The written admissions offered in evidence by the city of New Orleans relative to Elysian Fields street are offered to affect only the Chattanooga Railroad Company, and not the Pontchartrain Railroad Company.

The City of New Orleans also offers in evidence certificate of city surveyor, marked "AJ," which is admitted by plaintiff to be correct, except as to the following named streets, to wit: Girod, Lafayette, Poydras, Julia, and Notre Dame streets, and the city reserves the right to offer additional proof as to the distances from the railroad on said streets to the wharf.

301 It is admitted that document marked "AG" correctly exhibits the buildings erected, the walls of brick buildings being constructed, brick piers in process of construction, and fences—with the exception of the fence at the end of square 27A towards Canal street, which has been torn down.

The valuations of the property on this map are not admitted.

Testimony of John T. Moore.—Filed January 10, 1871.

JOHN T. MOORE, sworn for the city of New Orleans:

Question. Are you a resident of New Orleans?

Answer. Yes.

Question. What is your business?

Answer. I am a merchant.

Question. What kind of produce do you deal in?

Answer. Western produce generally.

Question. Does your business make you familiar with the wharves and levee in front of the city?

Answer. Yes.

Question. Are you frequently there, or not?

Answer. I am there occasionally, but my business there is generally done by my clerks.

Question. How long have you been in business in New Orleans?

Answer. Thirty years.

Question. What part of the city is your business located in?

Answer. Above Poydras; on Peters and New Levee streets, between Poydras and Lafayette.

Question. Have you, or not, observed the condition of the levee as to what facilities are given or wanting there as to the benefit of commerce, recently?

Answer. Yes.

Question. Have you observed it since these roads were put there?

Answer. Yes.

Question. Do you, or not, consider these railroads an obstacle or obstruction to the free transmission of freight of vessels to the city?

Answer. Most assuredly.

Question. Is there, or not, to your knowledge, any embarrassment experienced in consequence of the obstructions interposed by these roads?

Answer. Yes.

Question. What width of levee do you consider necessary for the purpose and convenience of commerce along that part of the river from Canal to Calliope streets, say?

Answer. Every inch of the levee from Front street to the water, and that is hardly adequate now.

Cross-examined:

Question. You said "these railroads;" what railroads do you speak of?

Answer. The two now running there; the Chattanooga road and the Morgan road; I know of no other two running there; I mean the Pontchartrain road and the Chattanooga road.

Question. How long has the Pontchartrain railroad been running there?

Answer. I cannot say; perhaps a year; I am not exactly certain.

302 Question. How long has the Chattanooga railroad been running there?

Answer. As far as Poydras street only within the last six months.

Question. Or within the last three months?

Answer. Perhaps; I am not exactly certain; I remember it was only recently since the laborers were employed to put down the sleepers; perhaps three months, or more.

Question. How many trains does the Chattanooga railroad run a day?

Answer. I think one.

Question. What sort of a train is that?

Answer. It is, as far as I noticed, an ordinary passenger train; I never paid any attention to the Morgan road.

Question. I am speaking of the Chattanooga railroad; how many trains are run on that road a day?

Answer. We ship frequently by that road, and they receive but once a day, for leaving in the afternoon; I think there is but one train run on that a day.

Question. How long is that train employed in running along the levee; how long does it occupy the levee?

Answer. It runs at a very slow rate as far as the sugar landing and to the depot.

Question. Does it occupy more than twenty minutes?

Answer. I cannot say.

Question. More than thirty minutes?

Answer. I cannot say.

Question. Give some estimate; it does not occupy the whole day in running there?

Answer. I have noticed their trains, from time to time, to stop a minute or two between the depot and Canal street; sometimes when drays were passing.

Question. In what manner do you say that the Chattanooga railroad train embarrasses you in your business?

Answer. I do not know that the train embarrasses business particularly; it is the track occupying that space which is required for commercial use and traffic; the train itself is not so much in the way; because the time taken by the train appears to me to be but a short time.

Question. In what manner does the track of that road embarrass your business?

Answer. In the first place, boats cannot discharge their cargoes on that particular space; there is danger of the cotton becoming damaged, and several feet on each side of the road has to be left open to prevent accidents.

Question. Do the bales of cotton lie on the levee?

Answer. Yes.

Question. Do they occupy the full space of a bale of cotton?

Answer. Yes; but they stand on end to save space.

Question. Do sugar hogsheads stand on the levee?

Answer. Yes.

Question. How long do the bales of cotton remain on the levee, on an average?

Answer. It is customary to remove the cotton immediately after a lot is completed; it is customary to remove the lot at once to the press; but recently, owing to the bad condition of the levee, cotton has
303 remained on the levee more than a week or ten days, the same cotton; owing to the impossibility of removing it.

Question. Does that cotton belong to the public or to individuals?

Answer. To individuals, of course.

Question. And the sugar likewise?

Answer. Yes.

Question. And the western produce also?

Answer. Yes.

Question. Do these railroads bring freight—produce of any kind—to this city?

Answer. I believe they do, sir.

Question. And passengers?

Answer. Yes.

Question. How long do the passengers landed from these trains occupy the levee?

Answer. I believe the passengers are landed at the depot.

Question. How long do the freights landed from these trains occupy the levee—or is that carried to the depot also?

Answer. I cannot tell; I never saw freight discharged from these roads; I do not know.

Re-examined:

Question. Have you recently observed, so as to be able to state, what number of tracks the Chattanooga Railroad Company has been laying in that part of the city?

Answer. I really have not.

Question. In regard to trains leaving the city—is there not a passenger train, and also a freight train?

Answer. I believe both are connected; that is my impression—that both are drawn by the same engine.

Question. Have you not observed what is called construction trains on the levee?

Answer. I think I have noticed trains with materials on them.

Question. When drays are going to and from the levee, are they, or not, interfered with in crossing those railroad tracks, in this way; that they are compelled to go to particular points to cross, or can they cross everywhere?

Answer. Not when the train is in motion. The drays generally cross at the street crossing.

Question. Are they, or not, compelled to do so because they cannot cross otherwise?

Answer. I cannot answer that question.

Testimony of R. W. Adams.—Filed January 10, 1871.

R. W. ADAMS, sworn for the city of New Orleans:

Question. Do you reside in New Orleans?

Answer. Yes.

Question. How long have you resided here?

Answer. Twenty-five or thirty years.

Question. What is your business?

Answer. Steamboat agent.

304 Question. What portion of the port of New Orleans is generally used for steamboat landings?

Answer. From a little above St. Louis street and up to Julia street, I think; and still higher up at present.

Question. Is that, or not, the most important and active part of the port of New Orleans?

Answer. Yes.

Question. Is there, at this time, now sufficient accommodation on the levee for the purposes of commerce, receiving and discharging cargoes of steamboats?

Answer. I think not.

Question. Was there before these railroads were built there?

Answer. At times there was not.

Question. Do these railroads interfere with that capacity for accommodating commerce?

Answer. I have heard——

Cross-examined:

Question. You have no connection with the commerce of the port particularly, yourself?

Answer. In collecting freight bills, yes; we have heavy collections.

Re-examined:

Question. What is the business of a steamboat agent?

Answer. To contract for freight and collect freight bills.

By the COURT. You say that the levee used for discharging cargoes is from St. Louis street to Julia; have you a notion of how many steamboats lie, at an average, at the wharves, discharging, at one time?

Answer. Twenty-five or thirty steamers would land in that space; it is difficult for me to say how many.

Question. The steamboat wharf does not extend above Julia street?

Answer. We have a wharf at the foot of Thalia street.

Question. Is that used for discharging ordinary freight?

Answer. Yes; they discharge cotton and sugar there.

Question. Heretofore they have discharged cotton and sugar—where?

Answer. Cotton above Canal and sugar below Canal street.

Question. How extensive is the wharf at the foot of Thalia street?

Answer. It is very wide.

Question How long is it?

Answer. I have known as many as three or four large boats landing there at one time. I do not know the extent of it; I think four or five large boats have landed there at one time.

Question. Where are the largest number of cotton yards in this city located?

Answer. Most of the packets endeavor to land at the foot of Canal street.

Question. In what part of the city are the majority or larger number of cotton yards—pickeries—located?

Answer. I think all over the city, but chiefly, mostly, in the first district—the cotton presses.

Cross-examined:

Question. Is that above Canal street?

305 Answer. Above Canal street.

Question. And above Julia?

Answer. Yes; and there are a good many in the back part of the city.

Question. The warehouses extend to Calliope street and above there?

Answer. Yes; most of them; I do not know exactly the situation of the presses.

Testimony of H. J. Leory—Filed January 10, 1871.

H. J. Leovy, sworn for the city of New Orleans:

Question. You have a country place across the lake?

Answer. Yes.

Question. You frequently visit it?

Answer. Yes, sir.

Question. What road do you use?

Answer. I go on the Chattanooga railroad. I have not gone there recently—for the last two or three weeks,

Question. Have you had an opportunity of observing how many trains are run on that road?

Answer. A passenger train at eight o'clock in the morning, and a freight train in the evening. I send frequently by the evening train. The passenger cars return in the evening, at six o'clock about, and the freight train at same hour; they are separate; the passenger train and the freight train do not go together. I have seen occasionally other cars go out; construction trains, I presume, and not passenger or freight trains, I believe.

Cross-examined:

Question. When did these trains commence running?

Answer. I think the first train was run on the first of November.

Question. Where is the Pontchartrain railroad situated?

Answer. The depot, I think, is on the levee, between Girod and Notre Dame streets, or between Girod and Lafayette.

Question. How long has the Ponchartrain railroad trains been running along the levee?

Answer. My recollection is not distinct about that; I think about eighteen months. I drew up the contract for the Pontchartrain railroad; it is between a year and a half and two years.

Question. How many trains does the Pontchartrain railroad run a day?

Answer. Every alternate hour they run, to and from the depot.

Question. They have freight trains as well as passenger trains?

Answer. I do not remember seeing any freight trains. They take freight to the lake, of course; but they generally have freight cars attached to passenger cars; and then they also have freight trains, in which they bring freight from Mobile.

Question. You are the attorney of that road?

Answer. No, sir; Mr. Finney is. I am the attorney of Mr. Morgan.

Question. Are you aware of any complaint, injunction, or what not, being interposed against that company for embarrassing, disturbing, or impeding commerce?

306 Question. Only from what I have seen in the public papers, and what I have occasionally heard.

Question. Is there any suit for removing them as a nuisance?

Answer. Only what I have seen in the newspapers.

Question. Have you known any case against them for removing their tracks from Esplanade street to the place at Girod and Lafayette?

Answer. I have seen notices in the newspapers in regard to this.

Question. You know of no case yourself?

Answer. No.

Testimony of A. H. Swanson—Filed January 10, 1871.

A. H. SWANSON, sworn for the city of New Orleans:

Question. Are you familiar with the levee from Canal to Caliope street in front of the city?

Answer. Yes.

Question. Inform the court, if you can, how many tracks the Chattanooga railroad has laid at or near Canal street, and some distance above?

Answer. At Canal street they have one main track, and some two or three switches; to the best of my recollection.

Question. How wide apart are they?

Answer. The distances are unequal. To the best of my recollection, the tracks cover a space of from eighty to one hundred feet.

Cross-examined;

Question. What is your business?

Answer. I am roadmaster of the Morgan Texas Railroad.

Question. Is there any connection between the Morgan Texas Railroad Company and the Pontchartrain Railroad Company in running up to the depot on Girod street?

Answer. We have no connection with the road.

Question. Is there any train that comes from Morgan's landing below and goes up to the point above at the depot?

Answer. No, sir.

Question. How many tracks have the Pontchartrain railroad?

Answer. On the levee—one track?

Question. How many switches have they there?

Answer. None on the levee.

Question. Where are their switches?

Answer. On ground situated between Poydras, Lafayette, and Julia streets—two squares of ground.

Question. How long has that road been in operation at that place?

Answer. I think two years last August since it commenced running.

Question. How many trains do they run a day?

Answer. They are now running every alternate hour from either end of the road.

Question. What is the ordinary length of their trains—how many cars usually?

Answer. There is nothing in general; sometimes short, and sometimes long; the average length, probably, is some three hundred feet.

307 Re-examined:

Question. You say that the depot of the Pontchartrain Railroad is on squares of ground?

Answer. Yes.

Question. And not on the levee at all?

Answer. No; not on the levee—that is, the switches.

Question. They are on their own property?

Answer. Yes; the switches.

Note of evidence.

Defendants Hutchison, Whitney, and Pandely offer in evidence:

The order of this court, dated 16th April, 1870, to transfer this case to the United States court, so far as Charles Morgan is concerned.

Also the charter of the Opelousas Railroad Company, page 328 of the acts of 1853 and page 12 of the acts of 1855.

Also the act of sale from the United States marshal to Charles Morgan, dated 20th May, 1869. Copy to be furnished.

Also copy of resolution of the Opelousas Railroad Company to issue bonds.

Also ordinance of the city of New Orleans No. 2890 (or 2290), and ordinances No. 79, new series, and No. 1492, new series.

The case is continued to January 25, 1871.

Agreement A. C.—Filed January 10, 1871.

Eighth district court, parish of Orleans.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS ET AL. } No. 19.

We agree that the defendants Pandely and Whitney & Co. are agents, and not owners or claimants, of any of the property described in the petition in this cause. They are agents of Charles Morgan simply.

It is further admitted that the structures complained of in the petition were made by said Pandely and Whitney & Co. under the direction and by order of the said Charles Morgan, whose agents they are; that said Pandely is superintendent of the Pontchartrain Railroad Company and of the Morgan, Louisiana and Texas Railroad Company, being the railroad formerly known as New Orleans, Opelousas and Great Western Railroad Company, which has its landing-place at the foot of St.

Anne street, in front of Jackson square. It is further admitted that said structures have been removed under order of this court.

(Signed) LEOVY & MONROE,
Attorneys for Morgan et als.

(Signed) J. A. CAMPBELL,
For Plaintiff.

Eighth District Court,
New Orleans,

308 *Document A D.—Admissions of New Orleans, Mobile and Chattanooga R. R. Co., through counsel.—Filed January* 10, 1871.

Eighth district court for the parish of Orleans.

N. O., M. AND CHAT. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

For the purposes of this trial, it is admitted that the King of France, prior to the year 1763, granted to the order of Jesuits, for a plantation, certain property lying on the Mississippi River above Canal street, having thirty-two arpents front on the river Mississippi, and running back to a depth of about fifty arpents; and that, for the same purpose, he granted to various other persons property lying above the aforesaid thirty-two arpents.

That in 1763 the Jesuits' plantation was confiscated by the French Government, divided, and sold; the first subdivision above Canal street, sold as aforesaid, contained, say, seven arpents face au fleuve, and five other equal subdivisions were sold in like manner. That Gravier acquired the first subdivision about 1788; the second, being immediately above Gravier, was acquired by Delord Sarpy, the boundary-line between said claim being now designated by Delord street. That Gravier divided his property in 1788 into squares and lots, and annexed them to the city as "suburb St. Marie." Sarpy converted his property from rural into urban in 1806.

That the locus in quo above Canal street is embraced within the Gravier or Sarpy claims. That when the aforesaid change from rural to urban was made the street now called Tchoupitoulas was then the nearest street to the river; that at that time there was a batture in front of Tchoupitoulas street; that the same, without any form or ceremony, was, as early as 1788, dedicated to public use, and since that time has been used by the public as a locus publicus.

That by an act of the legislative council of Louisiana passed in 1805, incorporating the city of New Orleans, the boundary of the city was extended above Canal street, so as to include the whole of the Jesuits' plantation; that by subsequent acts the upper boundary of the city has been extended to Carrollton, at least five miles above Canal street.

That all the grants of land between New Orleans and Carrollton which were originally made for plantations fronting on the river have since, and at various times, been converted by the proprietors into urban property, and that in all such cases a space has been left between the vacant street running parallel to the river and the river itself for public use.

That the batture in front of the Gravier claim formed a portion of the alluvion embraced by the compromise act of 1820, between Livingston and others.

That since 1820 the city has built wharves and levees in front of the Gravier and Sarpy claim, and at various other places above, for the purposes of commerce and the convenience of the public, and that they have been thus used.

That since the war the city has expended on her wharves and levees over one million of dollars; a portion was expended on the wharves and levees in front of the land embraced in the Gravier and Sarpy claim.

That from 1820 and before, and down to the present time, the public and the city have enjoyed the undisturbed use of the last-mentioned wharves and levees, and the city has derived a large revenue therefrom; and that from 1820 and before, and down to the present time, the city and the public have used and enjoyed the batture running along the river from Canal street, in front of and above the Gravier and Sarpy claim, as a locus publicus.

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That on the sixth day of September, 1717, a charter was granted by the King of France to a corporation styled the "Western Company;" that under the auspices of said company the ground where the old city of New Orleans now stands was selected as a place for the principal settlement, and the foundation of the city was laid; that the city extended in front from Canal street as far down as Elysian Fields street; that in 1724 and 1728 all the batture lying in front of the old city of New Orleans has been in the uninterrupted possession and actual enjoyment of *of* the inhabitants of the city of New Orleans and Louisiana, composed in part of citizens of the United States, as a place of public use, from 1724 down to the commencement of suit; and that lots and squares of ground abutting upon such batture have been bought and sold, and buildings have been erected upon said lots and squares, in reference to said batture being and remaining a place dedicated to common use. That in front of such batture the city has erected wharves and levees, involving a heavy expenditure, and from which she has derived a large revenue; and that such wharves and levees have always been open to public use and convenience.

That in 1805 Elysian Fields street was dedicated as a public street to the city of New Orleans by Bernard Marigny, and since that period has been recognized and used as a public street or highway in the city of New Orleans. That the road of defendant runs through that street near its centre, from the point of intersection of Elysian Fields street with the batture back to the point where the last-mentioned street intersects with Claiborne street, is one of the streets or highways of the city of New Orleans, and used as such, for the convenience and interests of the public.

(Signed) J. A. CAMPBELL,
For N. O., M. and C. R. R. Co.

Document A E and translation.—Act of compromise between Livingston and others, September 20, 1820.—*Filed January* 10, 1871.

En la ville de la Nouvelle Orléans, dans l'État de la Louisiane, le vingt de septembre mil huit cent vingt, et la quarante-cinquième année de l'Indépendence des États-Unis d'Amérique, par devant Hugues Lavergne, notaire public, dûment commissionné, dans et pour la ville et paroisse de la Nouvelle Orléans, y résident, et en présence des témoins ci-après nommés et soussignés, sont personnellement comparus les sieurs Edward Livingston, Jean Gravier, Louis Barthélemi Macarty, Christophe Toledano, Vincent Rillieux, Toussaint Mossy, Elie Victor

Jourdain; Manette St. Amand, femme de couleur, libre et majeure d'âge; Henry McCall, agissant tout en son nom qu'en celui de Joseph J. Winter, son associé; Étienne Mazureau, fondé de pouvoirs d'Alexandre La-Branche, pouvoirs dont il nous a justifié; l'honorable James Pitot, agissant pour et au nom de dame Jeanne Bordier, épouse du sieur Jean Mathieu Hélant Petit, et de Bertrand Gravier, jeune, et de demoiselle Jeanne Gravier, fille majeure, tous résidans en France, en vertu des procuration et supplément de procuration que la dite dame Petit avait adressée au sieur Nicolas Alphonse Desmare, par acte au rapport de Deschamps et son confrère, notaires à Bordeaux, sous la date des seize juillet mil huit cent dix-sept et vingt-cinq septembre mil huit cent dix-huit, et de celle que le dit sieur Bertrand Gravier, jeune, et de demoiselle Jeanne Gravier avait adressée à l'honorable Pierre Derbigny, par acte au rapport et son confrère, notaires à Bergerac, le dix-huit juin mil huit cent dix-sept, toutes lesquelles procurations sont déposées en l'étude de Michel de Armas, notaire public en cette ville, et ont été substituées au dit sieur James Pitot par les dits sieurs Desmare et Derbigny, par acte une date des cinq et dix juin derniers, déposée au même lieu; Barthélemi Lafon, au nom et comme exécuteur testamentaire de feu Pierre de la Bigarre; et le sieur John W. Oddie, fondé de pouvoirs générale et spéciale de Margaret, veuve de feu Pierre de la Bigarre, de Maria Louisa de la Bigarre, veuve de P. Hewart, et de demoiselle Amarylis Laura de la Bigarre, tous lesquels comparans demeurent de la Nouvelle Orléans, d'une part; et l'honorable Joseph Rouffignac, maire de la Nouvelle Orléans, y demeurant, agissant et stipulant pour et au nom des maire, aldermen et habitans de la Nouvelle Orléans, en vertu de la délibération du conseil de ville, sous la date du trente et un août dernier, dont expédition en bonne forme est ci-annexée; lesquels premiers comparans, soit en leurs noms personnels que dans les qualités qu'ils précèdent, et comme possesseurs actuels de la batture en face du faubourg Ste. Marie, ou les représentant, voulant favoriser le public dans l'usage du bord du fleuve qui se trouve en face de la dite batture, et faciliter la communication des rues qui doivent y aboutir, ils ont par les présentes fait donation, entre vifs et irrévocable, en la meilleure forme que donation puisse valoir, aux maire, aldermen et habitans de la Nouvelle Orléans, représentés par l'honorable Joseph Roffignac, maire de la dite ville, ici présent, et acceptant et stipulant pour les dits maire, aldermen et habitans, en vertu de l'autorisation à lui donnée à cet effet par le conseil de ville dans la délibération du trente et un août dernier, dont copie est ci-annexée, tous le droits que les dits donateurs ont ou peuvent avoir, chacun en ce qui le concerne: 1. Dans tout cette portion de la dite batture ou alluvion que existe à partir de la borne inférieure de la propriété de Mr. William W. Montgomery, et à venir en descendant jusqu'à la borne entre la ville et le faubourg Ste. Marie, et à prendre depuis le pied de la levée neuve, à son extérieur, jusqu'à la ligne marginale des eaux du neuve, lorsqu'elles sont les plus basses; 2. Dans la levée neuve qui a été construite sur toute l'étendue de la dite portion de batture, ainsi que le sol sur lequel elle est assise, telle que la dite levée se trouvera lorsqu'elle aura été réparée, augmentée et garnie en bois dans toute son étendue par les dits donateurs, ainsi qu'il est ci-après convenu; 3. Dans le sol nécessaire pour le prolongement des rues du dit faubourg jusqu'à la levée neuve, lesquelles seront ouvertes et remblayées, et accompagnées de plates-formes et de rampes sur le fleuve aux frais des dits donateurs, ainsi qu'il sera présenté dans la suite de cet acte; et 4. Dans le sol de la rue des Chapitoulas dans toute l'étendue du dit faubourg, en lui donnant soixante pieds

de largeur, y compris les trotoirs ou banquettes; tous lesquels terrains ainsi donnés ne sont sujets à aucunes hypothèques de la part des dits donateurs, ainsi qu'il résulte du certificat du conservateur de cette ville sous la date de ce jour, à l'exception des suivantes, savoir:

Trente-deux mille huit cent quatre-vingt-neuf piastres d'hypothèques
donnés par Mr. Edward Livingston de la manière suivante,
311 savoir: Douze mille huit cent vingt et deux piastres, en faveur
de James Johnston, sur le terrain numéro deux figuré au plan ci-annexé, certifié par Mr. Livingston et paraphé "ne varietur" par le notaire soussigné; quatorze mille trois cents piastres, en faveur de Mess. Vincent Nolte et Laurent Millaudon, sur les trois lots faisant encoignure des rues Notre Dame et de la levée nouvelle, figurée au dit plan sous les numéros dix-huit, dix-neuf et vingt; trois mille cinq cents piastres, en faveur de Joseph Segura, sur le lot de terre numéro onze; mille deux cent soixante-neuf piastres, en faveur de James Ramsay, sur le terrain numéro treize au dit plan, tous lesquels terrains n'empiètent en aucune manière sur les terrains et prolongemens de rues qui font l'objet de la présente donation, ainsi qu'il appert du susdit plan. De plus, neuf cent quatre-vingt-cinq piastres soixante-huit cents et trois quarts d'hypothèques judiciaires contre le sieur Gravier, résultant de divers jugemens rendus en faveur des personnes suivantes, savoir: John Boissier, pour quatre cent soixante et quatorze piastres six cents et un quart, et les intérêts, et Joseph Taboni, pour la somme de deux cent quarante-cinq piastres quatre-vingt-un cents et un quart, et deux cent soixante-cinq piastres quatre-vingt-un cents un quart, et les intérêts. De plus, deux mille soixante-sept piastres d'hypothèques tacites contre John Linton, pour cautionnement donné à la cour des preuves pour Stephen Duncan, curateur à la succession d'Hamilton Blakony. Et, enfin, cinquante mille piastres d'hypothèques données par Pierre de la Bigarre à Jean Gravier, pour sureté pour la vente de la batture.

Le présente donation est faite à la condition expresse, sans laquelle la dite donation n'aurait pas eu lieu, savoir: Que tous les terrains qui font l'objet de la présente donation resteront inaliénables et insaisissables, pour dettes ou autrement, entre les mains de la corporation de la Nouvelle Orléans, qui ne pourra jamais, et sous aucun prétexte (ainsi qui les dits maire, aldermen et habitans de la Nouvelle Orléans, représentés qu'il sont, s'y obligent expressément par les présentes), les vendre, échanger, donner ou en disposer autrement, en tout ou en partie, d'aucune manière quelconque, ni les employer à d'autres usages publics que ceux auxquels ils sont naturellement destiné, ni même y faire aucune constructions ou batisses, sauf néanmoins le seul cas où le conseil de ville jugerait convenable à l'intérêt général d'autoriser l'établissement d'une pompe à feu sur telle portion de la batture ainsi donnée que le conseil croirait devoir choisir à cet effet. Il est convenu, cependant, que cette restriction de faire des batisses ou constructions de la part de la corporation ne pourra être interpretée de manière à empêcher le maire et le conseil de ville de la Nouvelle Orléans d'établir ou de faire établir des jettées ou warfs pour la facilité du commerce, lorsque les dits maire et conseil de ville le jugeront convenable. Et en considération de la présent donation, et des avantages qui peuvent en résulter pour toutes les parties, les dits donateurs déclarent s'obliger conjointement par les présentes, envers les dits donataires, et ce accepté par eux, à faire réparer ou augmenter la nouvelle levée ainsi donnée, dans toute son étendue, de manière à ce qu'elle ait soixante pieds de crête; laquelle levée devra être confectionnée et parachevée dans la direction des

lignes coloriées en jaune sur le plan ci-annexé, et désignées par les lettres A, B, C, D, lequel plan sera paraphé "ne varietur;" et la dite levée devra être revêtue en bois de cypre de la même manière que l'est la partie de la levée qui se trouve en face de la ville entre les rues Conti et Bienville; et les dits donateurs s'obligent, de plus, en ce qui les concerne envers les dits donataires, ce accepté par eux, à ouvrir et exhausser à leurs frais toutes les rues du dit faubourg Ste. Marie qu'il s'agit de prolonger depuis la rue des Chapitoulas jusqu'à
312 la levée neuve ainsi donnée, et de faire à l'extrémité de chacune des dites rues ainsi prolongées, et en dehors de la levée, une plate-forme ayant douze pieds de longueur et une largeur égale à celle de la rue ainsi prolongée, avec une rampe en pente douce de chaque côté. Et les dits donateurs s'obligent par les présentes à commencer immédiatement tous les dits travaux à partir de la date du présent acte, et ce de la manière suivante, savoir: Les travaux de la réparation, augmentation et revêtement de la levée susmentionée, tels qu'ils sont décrits ci-dessus, à partir de la borne inférieure du faubourg Ste Marie, en remontant, en sorte qu'ils soient continués sans interruption tant que la crue du fleuve n'y mettra pas d'obstacle, et qu'ils soient parachevés dans le terme de deux années à partir de la date du présent acte; et les travaux nécessaires pour le prolongement et le remblai des rues du dit faubourg, à partir de la rue des Chapitoulas jusqu'à la levée neuve, en sorte qu'ils soient parachevés et que les dits prolongemens de rues soient practicables pour les voitures et charettes, au plus tard, pour le premier janvier mil huit cent vingt et un. Il est convenu entre toutes les parties que tous les travaux ci-dessus décrits s'exécuteront sous la direction et approbation du voyer de la ville, et que faute par les dits donateurs de commencer les dits travaux dans la quinzaine de la date du présent acte le maire et le conseil de ville auront le droit de faire les dits travaux aux frais et dépens des dits donateurs, et de la manière que les dits maire et conseil de ville le jugeront convenable, et qu'en outre ils pourront faire saisir et vendre les terrains des dits donateurs ci-après affectés et hypothéqués pour le paiement des dits travaux; il est de plus convenu que jusqu'à ce que les rues susdites soient remblayées et exhaussées convenablement, et jusqu'à ce que les travaux de la levée soient parachevés, le conseil de ville donnera ses ordres pour interdire au public de prendre de la terre sur aucune partie de la batture ainsi donnée, excepté dans l'espace contenu entre une ligne correspondante au prolongement de la rue Girod et la borne de la propriété de M. William W. Montgomery, et pour que le voyer de la ville veille ce que la dite terre soit enlevée par couches égales; et il est enfin convenu qu'aussitôt après le parchèvement des dits travaux, et la réception d'iceux par le voyer de la ville, l'entretien et la réparation de la levée, des rues, plates-formes et rampes ci-dessus mentionnés seront à la charge des maire, aldermen et habitans de la Nouvelle Orléans.

Et toujours, en considération de la présente donation, et des avantages qui peuvent en résulter pour toutes les parties, les dits donateurs s'obligent par les présentes à détruire, ou faire détruire, à leurs frais et dépens, dans le terme d'un mois à partir de la date du présent acte, toutes les bâtisses ou autres constructions en bois qui existent actuellement sur la batture du faubourg Ste. Marie, et à en faire emporter tous les matériaux; comme aussi ils s'interdisent par les présentes, et tant pour eux-mêmes que pour leurs héritiers ou ayans-causes, de pouvoir élever aucunes maisons ou édifices sur la dite batture qu'autant que les murs d'iceux seront en briques ou en pierres et qu'ils seront couverts en tuiles ou

autres matières incombustibles, à peine en cas de contravention à la présente clause de voir les dits maisons et édifices qui seraient construits différe'ment detruits à leurs frais et dépens. Et les dits maire, aldermen et habitans de la Nouvelle Orléans, représentés comme il est dit ci-dessus, s'engagent par les présentes à faire construire une halle pour servir de marché public, laquelle sera placée dans le faubourg Ste. Marie, et ce pour et en considération d'une somme de trois cents piastres que les dits donateurs s'obligent par les présentes de payer à la corporation de la Nouvelle Orléans, par chaque terrain de trente pieds de face à la levée neuve qu'ils possédent sur la batture du
313 faubourg Ste. Marie, sans égard pour la profondeur des dits terrains, et ce en leurs billets respectifs à l'ordre du maire de la Nouvelle Orléans, à un et deux ans de terme, à compter de la date du présente acte, en fournissant, chacun en ce qui les concerne, une hypothèque spéciale sur les terrains qui leur appartiennent respectivement sur la dite batture, et ce pour sureté du paiement des susdits billets à leur échéance; et dans le cas où la somme qui proviendra des dits paiemens serait plus que suffisante pour faire face aux frais de construction de la dite halle, les maire, aldermen et habitans de la Nouvelle Orléans, représentés comme il est dit ci-dessus, s'obligent par les présentes à employer cet excédant à subvenir aux frais de construction d'une autre halle pour servir de marché, laquelle sera placée au faubourg Marigny.

Et en exécution des présentes conventions, les dit donateurs *ont* immédiatement fournis et délivré, en présence de nous, notaire, et des témoins soussignés, à l'honorable Joseph Roffignac, qui le reconnaît, leurs billets respectifs, en date de ce jour, et à l'ordre du dit Joseph Roffignac, maire de la Nouvelle Orléans, pour les terrains qu'ils possédent respectivement sur la batture du faubourg Ste. Marie, conformément au plan ci-annexé, tous lesquels billets *ont* été paraphés "ne varietur" pour constater leur rapport avec le présent acte, et *ont* été fournis de la manière suivante, savoir: Deux billets souscrits par le sieur Edward Livingston, sous la date et ordre que dessus, l'un de la somme de cinq mille quatre cent quatre-vingt-trois piastres trente-trois cents et un tiers, payable à un an de date, et l'autre de pareille somme de cinq mille quatre cent quatre-vingt-trois piastres trente-trois cents et un tiers, payable à deux ans de date, faisant ensemble celle de dix mille neuf cent soixante-six piastres soixante-six cents deux tiers; deux billets souscrits par le sieur Jean Gravier, même ordre et date, l'un de la somme de douze cent quarante piastres, payable à un an de date, et l'autre de pareille somme de douze cent quarante piastres, payable à *un an de date, et l'autre de pareille somme de douze cent quarante piastres, payable à* deux ans de date, faisant ensemble celle de deux mille quatre cent quatre-vingt piastres; deux billets souscrits par Louis Barthélemy Macarty, même date et ordre, l'un de la somme de cent cinquante-cinq piastres, payable à un an de date, et l'autre de pareille somme cent cinquante-cinq piastres, payable à *un an de date, et l'autre de pareille de somme cinquante-cinq piastres, payable à* deux ans de date, fesant ensemble celle de trois cent dix piastres; deux billets souscrits par le sieur Christophe Toledano, même date et ordre, l'un de la somme de cent treize piastres soixante et quinze cents, payable à un an de date, et l'autre de pareille somme de cent treize piastres soixante et quinze cents, payable à deux ans de date, fesant ensemble celle de deux cent vingt-sept piastres cinquante cents; deux billets souscrits par le sieur Vincent Rillieux, même date et ordre, l'un de la somme de deux cent soixante et douze piastres quatre-vingt-onze cents deux tiers, payable à un an de date,

et l'autre de pareille somme de deux cent soixante et douze piastres quatre-vingt-onze cents deux tiers, payable à deux ans de date, faisant ensemble celle de cinq cent quarante-cinq piastres quatre-vingt-trois cents un tiers; deux billets souscrits par le sieur Toussaint Mossy, même date et ordre, l'un de la somme de cent trente-six piastres vingt-cinq cents, payable à un an de date, et l'autre de pareille somme de cent trente-six piastres vingt-cinq cents, payable à deux ans, fesant ensemble celle de deux cent soixante-douze piastres cinquante cents; deux billets souscrits par le sieur Elie Victor Jourdain, même date et ordre, l'un de la somme de cent quatre-vingt-une piastres vingt-cinq cents, payable à un an de date, et l'autre de pareille somme de *cinq* quatre-vingt-
314 une piastres vingt-cinq cents, payable à deux ans de date, fesant ensemble celle de trois cent soixante-deux piastres cinquante cents; deux billets souscrits par Messieurs Winter & McCall, et Linton et Wilkins, même date et ordre, l'un de la somme de deux cent soixante et douze piastres quatre-vingt-onze cents deux tiers, payable à un an de date, et l'autre de pareille somme de deux cent soixante et douze piastres quatre-vingt-onze cents deux tiers, payable à deux ans de date, fesant ensemble celle de cinq cent quarante-cinq piastres quatre-vingt-trois cents un tiers; deux billets souscrits par le sieur Alexandre Labranche, même date et ordre, l'un de la somme de deux cent soixante et douze piastres quatre-vingt-onze cents deux tiers, payable à un an de date, et l'autre de pareille somme de deux cent soixante et douze piastres quatre-vingt et onze cents deux tiers, payable à deux ans de date, faisant ensemble celle de cinq cent quatre-vingt-trois cents un tiers; deux billets souscrits par le sieur James Pitot, au nom et comme fondé de la procuration de Jeanne Bordier, femme Petit, de Bertrand Gravier, jeune, et de Jeanne Gravier, même date et ordre, l'un de la somme de quatre mille huit cent quarante-huit piastres soixante-quinze cents, payable à un an de date, et l'autre de pareille somme de quatre mille huit cent quarante-huit piastres soixante-quinze cents, payable à deux ans de date, fesant ensemble celle de neuf mille six cent quatre-vingt-dix-sept piastres cinquante cents; deux billets souscrits par Barthélemy Lafon, au nom et comme exécuteur testamentaire de feu Pierre de la Bigarre, même date et ordre, l'un de la somme de quatre cent soixante et dix piastres, payable à un an de date, et l'autre de pareille somme de quatre cent soixante et dix piastres, payable à deux ans de date, fesant ensemble celle de neuf cent quarante piastres; tous lesquels billets l'honorable Joseph Roffignac, ès qualité, donne décharge aux sieurs donateurs payés qu'ils soient à leurs échéance. Et quand à la dite Manette St. Amand, femme de couleur libre, comparante et donatrice au présente acte, elle a préféré pour se dispenser de fournir ses deux billets de cent cinquante-cinq piastres chaque, à un et deux ans de terme, ainsi que dessus, et éviter de donner une hypothèque spéciale sur le terrain numéro douze au plan ci-annexé, de trente-un pieds de face sur la profondeur figurée au dit plan, qu'*i*lle posséde sur la dite batture, de payer immédiatement sa quote part, s'élevant à trois cent dis*c* piastres, entre les mains de l'honorable Joseph Roffignac, ès qualité, qui reconnait avoir reçu la dit*te* somme de trois cent dix piastres pour les deux billets de cent cinquante-cinq piastres chaque, à un et deux ans de date, que la dite Manette St. Amand aurait autrement eu à fournir, déclarant le dit sieur Joseph Roffignac donner par les présentes à la dite Manette St. Amand bonne et valable quittance et décharge de sa dite quote part de troi*x* cent dix piastres. Et pour sureté de paiement des dits billets à leur échéance respectives, les dits sieurs donateurs déclarent donner, chacun en droit soi et en ce qui le concerne, hypothèque spé-

ciale, aux maire, aldermen et habitans de la Nouvelle Orléans, sur les terrains suivans, savoir: Le sieur Edward Livingston a hypothéqué ainsi que dessus: 1, le terrain numéro un au plan ci-annexé, de cent quarante-deux pieds huit pouces de sur la profondeur figurée au dit plan; 2d, le terrain numéro vingt au dit plan, ayant deux cent dix pieds de face sur la profondeur comme il est ci-dessus; 3d, le terrain numéro vingt et un au dit plan, ayant deux cent quarante-deux pieds de face sur la profondeur ainsi qu'il a été dit; 4th, le terrain numéro vingt-deux au susdit plan, ayant deux cent vingt pieds de face sur la profondeur comme il a été dit; 5th, les trois quarts du terrain numéro vingt-quatre au dit plan, qu'il posséde par indivis avec les héritiers De la
315 Bigarre, le dit terrain ayant trois cent trente-deux pieds de face sur la profondeur telle qu'elle a été sus-énoncée; et 6th, enfin, les trois quarts du terrain numéro vingt-cinq du dit plan, qu'il posséde par indivis avec les mêmes héritiers, lequel terrain a quarante-quatre pieds de face sur la profondeur comme il est dit ci-dessus, le tout pour sureté du paiement de la somme de dix mille neuf cent soixant-six piastres soixante-six cents deux tiers, montant des billets ci-dessus par lui souscrits comme il a été dit. Le sieur Jean Gravier a hypothéqué de la même manière le quart du terrain numéro vingt-trois figurée au susdit plan, qu'il posséde par indivis avec les héritiers Gravier, le dit terrain ayant quatre cent quatre-vingt-seize pieds de face sur une profondeur telle qu'elle est figurée sur le dit plan, et ce pour sureté du paiement de la somme de douze cent quarante piastres, montant des billets par lui souscrits comme il est dit ci-dessus; le sieur Louis Barthélemy Macarty a hypothéqué de la même manière le terrain numéro seize au dit plan, ayant trente et un pieds de face sur la profondeur figurée au dit plan, et ce pour sureté de la somme de trois cent dix piastres, montant des billets souscrits par lui comme il est dit ci-dessus; le sieur Christophe Toledano a hypothéqué comme ci-dessus le terrain numéro dix-huit au dit plan, ayant le dit terrain vingt-deux pieds neuf pouces de face sur la profondeur figurée au dit plan, et ce pour sureté du paiement de deux cent vingt-sept piastres cinquante cents, montant des billets par lui souscrits comme dessus; le sieur Vincent Rilleux a hypothéqué de même le terrain numéro dix du dit plan, ayant le dit terrain cinquante-quatre pieds sept pouces de face sur la profondeur figurée au dit plan, pour sureté du paiement des cinq cent quarante-cinq piastres quatre-vingt-trois cents et un tiers de billets par lui souscrits comme dessus; le sieur Toussaint Mossy a hypothéqué de la même manière le terrain numéro neuf du dit plan, mesurant vingt-sept pieds trois pouces de face, profondeur figurée au plan, pour sureté du paiement des deux cent soixante-douze piastres et cinquante cents de billets souscrits par lui comme dessus; le sieur Elie Victor Jourdain a hypothéqué de la même manière le terrain numéro quatorze du dit plan, mesurant trente-six pieds trois pouces du face sur la profondeur figurée au plan, pour sureté du paiement des trois cent soixante-deux piastre cinquante cents de billets souscrits par lui comme dessus; les sieurs McCall et Linton, au nom de leur société de Winter et McCall, et de Wilkins et Linton, ont hypothéqué le terrain numéro six du dit plan, mesurant cinquante-quatre pieds sept pouces de face, profondeur figurée au plan, pour sureté du paiement des cinq cent quarante-cinq piastres quatre-vingt-trois cents un tiers de billets par eux souscrits comme dessus; le sieur Étienne Mazureau, fondé de pouvoirs du sieur Alexandre Labranche, a hypothéqué de la même manière le terrain numéro cinq au dit plan, mesurant cinquante-quatre pieds sept pouces de face sur la profondeur

figurée au dit plan, pour sureté du paiement des cinq cent quarante-cinq piastres quatre-vingt-trois cents un tiers de billets souscrits par le sieur Alexandre Labranché ainsi qu'il a été dit; le sieur James Pitot, ès qualité, a hypothéqué de la même manière les terrains numéros deux, quatre, six, huit, onze, treize, quinze, dix-sept, dix-neuf, et les trois quarts du terrain numéro vingt-trois au dit plan, mesurant ensemble huit cent quarante-cinq pieds neuf pouces sur la profondeur ggurée au dit plan, pour sureté du paiement de neuf mille six cents quatre-vingt-dix-sept piastres cinquante cents de billets par lui souscrits, en sa dite qualité, comme il est dit ci-dessus; et le dit sieur Barthélemi Lafon, ès qualité, a hypothéqué de la même manière le quart des terrains numéros vingt-quatre et vingt-cinq au dit plan, possédés par indivis par
316 les héritiers De la Bigarre et Mr. Livingston, ayant ensemble les dites portions de terrains quatre-vingt-quatorze pieds de face sur la profondeur figurée au plan susdit, et ce pour sureté du paiement de neuf cent quarante piastres souscrits par le dit sieur Lafon, en sa qualité, comme il a été dit.

Et pour l'inscription des présents hypothèques, et pour l'insinuation de la donation contenue au présent acte, tous pouvoirs nécessaires sont donnés au porteur d'une expédition des présentes.

Fait et passé en mon étude, les jour, mois et an que dessus, en présence des sieurs Jean Baptiste Desdunes, fils, et Jean Bte. Donation Augustin, témoins réquis et domiciles, qui ainsi que les comparans ont signé avec nous, notaire, après lecture faite.

(Orig'nal signed:)

EDW. LIVINGSTON.
E. MAZUREAU,
Pour JN. GRAVIER.
A'DRE LABRANCHE.
T. MOSSY.
TOLEDANO.
L. B. MACARTY.
LAFON,
Executeur Testamentaire de Pierre de la Bigarre.
MANETTE ST. AMAND.
J. ROFFIGNAC, *Maire.*
VINCENT RILLIEUX.
J. PITOT,
Fondé de Pouroir des H'ers Gravier.
WINTER & McCALL.
WILKINS & LINTON.
E. V. JOURDAIN.
J. B. DESDUNES, FILS.
J. B. D. AUGUSTIN.
H. LAVERGNE, *Not. Pub.*

STATE OF LOUISIANA,
Parish of Orleans:

I, Andrew Hero, jr., a notary public, and the custodian of notarial records in and for the parish and city of New Orleans, commissioned and qualified, do certify the foregoing as being a true and correct copy of the original act extant in the records of Hugues Lavergne, formerly a notary public in this city, and whose records I hold as custodian thereof.

As attest my hand and seal at New Orleans, as custodian as aforesaid, this 13th day of October, A. D. 1870.

[SEAL.] (Signed) ANDREW HERO, JR.,
Custodian of Notarial Records.

Translation of Document A E.

N. O., M. AND CHAT. R. R. CO. vs. CITY OF NEW ORLEANS ET ALS. } No. 19.

To the honorable the eighth district court for the parish of Orleans:

The undersigned, appointed translator in the above-entitled case to translate Document A E, filed Jan. 10, 1871, and purporting to
317 be an act of donation, begs leave to submit the annexed as a true and correct translation of the aforesaid document, made in pursuance of the order appointing him as translator herein; a copy of which order, together with his oath, are thereto annexed for reference.

And the undersigned prays that the said translation be accepted and approved by the court.

Respectfully,

A. L. VILLERÉ.

Oath of translator.

State of Louisiana, eighth district court, parish of Orleans.

N. O., M. AND C. R. CO. vs. CITY OF NEW ORLEANS ET ALS. } No. 19.

Before me, deputy clerk of the eighth district court for the parish Orleans, personally came and appeared A. L. Villeré, who solemnly swears that he will well and faithfully perform all and singular the duties of translator under the order appointing him as such, dated February 20, 1871, a copy of which is hereto annexed. So help me God.

(Signed) A. L. VILLERÉ.

Sworn to and subscribed before me, New Orleans, February , 1871.

(Signed) ROBERT LYNNE,
Deputy Clerk.

Order of appointment.

State of Louisiana, eighth district court, parish of Orleans.

Monday, the 20th day of February, 1871. Present, the honorable Henry C. Dibble, judge.

N. O., M. AND CHAT. R. R. CO. vs. CITY OF NEW ORLEANS ET ALS. } No. 19.

It is ordered by the court that A. J. Villeré, esq., be appointed as a translator herein to translate "Document A E," filed Jan. 10th, 1871, written in the French language, said document purporting to be "An act of donation by the owners of the batture in front of faubourg St. Marie to the mayor and aldermen and inhabitants of the city of New Orleans," and that said Villeré be notified to appear and qualify as such.

A true extract from the minutes.

ROBERT LYNNE,
Deputy Clerk.

Translation of Document A E.

In the city of New Orleans, in the State of Louisiana, on the twentieth day of September, one thousand eight hundred and twenty, and the forty-fifth of the Independence of the United States of America, before me, Hughes Lavergne, notary public, duly commissioned, in and for the city and parish of New Orleans, therein residing, and in presence of the witnesses hereinafter named and undersigned,
318 personally came and appeared Messrs. Edouard Livingston, Jean Gravier, Louis Barthélemi Macarty, Christophe Toledano, Vincent Rillieux, Toussaint Mossy, Elie Victor Jourdain; Manette St. Armand, free woman of color and of lawful age; Henry McCall, herein acting in his own behalf and on behalf of Joseph J. Winter, his partner, Étienne Mazureau, as agent and attorney in fact of Alexandre Labranche, under power of attorney duly exhibited to the undersigned notary; the honorable James Pitot, herein acting in the name and on behalf of Bertrand Gravier, jr., and of Miss Jeanne Gravier, daughter of full age, and also in the name and on behalf of Mrs. Jeanne Bordier, wife of Jean Mathieu Hélant Petit, all residing in France, by virtue of powers of attorney and supplementary power of attorney which the said Mistress Petit had executed in favor of Nicholas Alphonse Desmare by act before Deschamps and his colleague, notaries at Bordeaux, under date of the sixteenth day of July, eighteen hundred and seventeen, and twenty-fifth day of September, eighteen hundred and eighteen, and of that which the said Bertrand Gravier, jr., and Miss Jeanne Gravier had executed in favor of the honorable Pierre Derbigny, by act passed before Bagnaire and his colleague, notaries at Bergerac, on the eighteenth of June, one thousand eight hundred and seventeen, all of which powers of attorney are deposited in the office of Michel de Armas, notary public in this city, and have been transferred to the said Mr. James Pitot by the said Messrs. Desmare and Derbigny by acts passed under date of the fifth and tenth of June last, and deposited in the same office; Barthélemi Lafon, in the name and as testamentary executor of the late Pierre de la Bigarre; and Mr. John W. Oddie, by virtue of a general and special power of attorney of Mrs. Margaret, widow of the late Pierre de la Bigarre, and of Maria Louisa de la Bigarre, widow of P. Hewart, and of Miss Amarylis Laura de la Bigarre, all of which appearers reside in New Orleans, on one part; and the honorable Joseph Rouffignac, mayor of the city of New Orleans, therein residing, acting and stipulating in behalf and in the name of the mayor, alderman, and inhabitants of New Orleans, by virtue of the proceedings of the city council under date of the thirty-first of August last, of which an authenticated copy is hereto annexed.

Which said first appearers, whether in their own name or in the capacities which they hold, and as actual owners of the batture in front of the suburb St. Mary, or representing said owners, wishing to favor the public in the use of the river side which lies in front of said batture, and to facilitate the communication between the streets which will terminate at that place, have, by these presents, made a donation inter vivos and irrevocable, and in the best form in which a donation may be valid, to the mayor, aldermen, and inhabitants of New Orleans, herein represented by the honorable Joseph Roffignac, mayor of the city, now present, and accepting and stipulating for the said mayor, aldermen, and inhabitants, by virtue of the authority in him vested for that purpose by the city council in the proceedings of thirty-first of

August ultimo, of which a true copy is hereto annexed, of all the rights which the said donors have or may have respectively:

1st. In all that portion of the said batture or alluvion which exists from the lower limit of the property of Mr. William W. Montgomery, and extending downwards to the limit between the city and the
319 suburb St. Mary, and taking from the foot of the new levee exteriorly to the marginal line of the river when at its lowest stage;

2d. In the new levee which has been constructed on the whole length of the said portion of batture, as well as the ground on which it is built, such as said levee will be when it shall have been repaired, increased, and braced with wood by the said donors as hereinafter agreed;

3d. In the ground necessary for the extension of the streets of said suburb up to the new levee, which shall be opened, and graded, and laid with a wharf and slope on the river at the expense of said donors, as it is hereinafter prescribed by this act; and,

4th. On the ground of Tchoupitoulas street on the whole length of said suburb, allowing said street sixty feet in width, including the side, walks or banquettes; all of which lots so donated are not encumbered by any mortgages on the part of said donors, as appears from the certificate of the recorder of this city dated this day, excepting the following, to wit:

Thirty thousand eight hundred and eighty-nine dollars of mortgage given by Edward Livingston in the following manner, to wit:

Twelve thousand eight hundred and twenty dollars, in favor of James Johnston, on the lot number two on the plan hereto annexed, certified by Livingston and paraphed "ne varietur" by the undersigned notary; fourteen thousand three hundred dollars, in favor of Messrs. Vincent Nolte and Laurent Millaudon, on the three lots forming the corner of Notre Dame street and of the new levee, and bearing the numbers eighteen, nineteen, and twenty on said plan; three thousand five hundred dollars, in favor of Joseph Segura, on the lot number eleven, one thousand two hundred and sixty-nine dollars, in favor of James Ramsay, on lot number thirteen of said plan, which said lots do not encroach in any manner on the ground and extensions of streets which are subject to this donation, as appears by the said plan. Furthermore, nine hundred and eighty-five dollars sixty-eight cents and three-fourths of judicial mortgages against Mr. Gravier, resulting from several judgments in favor of the following-named persons, to wit:

John Bossier, for four hundred and seventy-four dollars six cents and one-fourth, with interest; and Joseph Taboire for the sum of two hundred and forty-five dollars eighty-one cents and one-fourth, and interest, and two hundred and sixty-five dollars eighty-one cents and one-fourth, and interest.

Furthermore, two thousand and sixty-seven dollars of tacit mortgages against John Linton, as surety on the bond executed in the probate court by Stephen Duncan as curator of the succession of Hamilton Blakony.

And, finally, fifty thousand dollars of mortgages granted by Pierre de la Bigarre, in favor of Jean Gravier, to secure the sale of the batture.

The present donation is made with the express condition (without which it would not have taken place) to wit:

That all lots of ground which are the object of the present donation will remain inalienable and guaranteed against all siezures, either for debts or otherwise, in the hands of the corporation of New Orleans,

which will never, under any pretext, as herein agreed to by the mayor, aldermen, and inhabitants of New Orleans, duly represented herein, be sold, exchanged, donated, or disposed of, in whole or any part thereof, in any manner whatever, or be used for other public purposes than those for which they are naturally destinated, nor to erect thereon any building or construction, with the exception, however, of the only case in
320 which the city council would deem it proper to the public interest to authorize the erection of a fire-engine house on such portion of the batture which the city council shall select for that purpose. It is hereby agreed, nevertheless, that this restriction from erecting buildings or constructions will not be construed in such a manner as to prohibit the mayor and city council of New Orleans from establishing, or causing to be established, piers or wharves, to facilitate commerce, when the said mayor and city council will deem it proper.

And in consideration of this present donation, and the advantages which may derive therefrom for all parties, the said donors hereby jointly obligate themselves, by these presents, in favor of the said donees, and this by them accepted, to repair and increase the new levee thus donated on its whole length, so that it shall have sixty feet at the top; which said levee shall be constructed in the direction of the fellow lines on the plan hereto annexed, and designated by the letters A, B, C, D, which said plan shall be paraphed "ne varietur;" and the said levee shall be covered with cypress wood in the same manner as that part of the levee lying in front of the city between Conti and Bienville streets. And the donors further obligate themselves respectively, in favor of the donees, as accepted by them, to open and raise, at their expense, all the streets of the said suburb St. Mary which are to be extended from Tchoupitoulas street to the new levee as donated, and to erect at the extremity of each of said streets thus extended, and outside of the levee thus given, a platform having twelve feet in length and a width equal to that of the street so extended, with an easy slope on each side; and the said donors bind themselves, by these presents, to begin immediately all the said works from the date of the present act, and this in the following manner, to wit:

The works for the repairs, increase, and covering of the levee above mentioned, such as they are described above, to extend from the lower limit of the suburb St. Mary, going up in such a manner that they be continued without interruption as long as not obstructed by the rising of the river, and that they be completed in the term of two years from the date of the present act; and the necessary works for the filling up of the streets of the said suburb, from Tchoupitoulas street as far as the new levee, so that they be completed, and that the said extensions be practicable for carriages and carts, at the latest, by the first of January, eighteen hundred and twenty-one. It is agreed between all the parties that all the works above described will be executed under the direction and approbation of the surveyor of the city; and in default of said donors beginning the said works within fifteen days from the date of the present act, the mayor and the city council shall have the right to have and the works executed at the charges and expenses of the said donors, said in the manner which the said mayor and city council will deem proper; and that further they will be empowered to seize and sell the lots of the said donors hereinafter affected and hypothecated, for the payment of said works. It is further agreed that until the streets aforesaid be satisfactorily filled and raised, and until the works of the levee be completed, the city council shall issue orders to enjoin the public from taking any dirt on any portion of the batture

thus donated, with the exception of the space lying between a line corresponding with the extension of Girod street and the limit of the property of William W. Montgomery, and that the city surveyor shall see that the said dirt be taken in equal portions. And it is finally agreed that immediately after the completion of said works, and the acceptance of the same by the city surveyor, the maintenance and repair of the levee, platforms, streets, and slopes herein-
321 above mentioned shall be at the expense of the mayor, aldermen, and inhabitants of New Orleans; and, furthermore, in consideration of the present donation and the advantages which may derive therefrom for all parties, the said donors obligate themselves by these presents to demolish and cause to be demolished, at their charges and expenses, within one month from the date of the present act, all buildings or other wooden constructions which actually exist on the batture of suburb St. Mary, and to cause all the materials thereof to be carried away; and they are enjoined themselves, their heirs and assigns, by these presents, from having the power of erecting any house or building on the said batture unless the walls of said buildings shall be of bricks or stones, and that they shall be roofed with tiles or other incombustible materials, under penalty, if there be any contravention of this present clause, to have the said houses or buildings which would be differently constructed torn down at their charges and expenses.

And the said mayor, aldermen, and inhabitants of New Orleans, represented as hereinabove set forth, obligate themselves by these presents to erect a market for the use of public marketing, which shall be situated in the suburb St. Mary; and this for and in consideration of the sum of three hundred dollars, which the said donors bind themselves by these presents to pay to the corporation of New Orleans, for each lot of thirty feet front which they own on the batture of the suburb St. Mary, without any regard for the depths of said lots, and this in their respective notes to the order of the mayor of the city of New Orleans, at one and two years, from the date of the present act, executing each one of them respectively a special mortgage on the lots to them belonging respectively on the said batture, and this for the surety of the payment of the aforesaid notes at their maturity; and in case the sum accruing from said payments be more than sufficient to cover the expenses of the building of the said market, the mayor, aldermen, and inhabitants of New Orleans, represented as aforesaid, bind themselves by these presents to use the exceeding amount towards defraying the expenses of the building of another market, to be used for public marketing, which shall be situated in the suburb Marigny.

And in execution of the present conventions, the said donors have immediately given and delivered, in the presence of me, notary, and the undersigned witnesses, to the honorable Joseph Roffignac, who hereby acknowledges receipt thereof, their respective notes, dated this day, and to the order of the said Joseph Roffignac, mayor of New Orleans, for the lots which they own respectively on the batture of the faubo'rg St. Mary, in conformity with the plan hereto annexed, which notes were paraphed "ne varietur," to identify them with the present act, and have been given in the following manner:

Two notes drawn by Edward Livingston, under date and to the order above mentioned, one for the sum of five thousand four hundred and eighty-three dollars thirty-three cents and one-third, payable one year after date, and the other for an equal amount of five thou-

sand four hundred and eighty-three dollars thirty-three cents and one-third, payable two years after date, amounting together to the sum of ten thousand nine hundred and sixty-six dollars sixty-six cents and two-thirds.

Two notes drawn by Jean Gravier, of the same date and to the same order, one for the sum of twelve hundred and forty dollars, payable one year after date, and the other for an equal sum of twelve hundred and forty dollars, payable two years after date, amounting together to the sum of two thousand four hundred and eighty dollars.

322 Two notes drawn by Louis Barthélemy Macarty, of the same date and to the same order, one for the sum of one hundred and fifty-five dollars, payable one year after date, and the other for an equal sum of one hundred and fifty dollars, payable two years after date, amounting together to the sum of three hundred and ten dollars.

Two notes drawn by the said Christophe Toledano, of the same date and to the same order, one for the sum of one hundred and thirteen dollars seventy-five cents, payable one year after date, and the other for an equal sum of one hundred and thirteen dollars seventy-five cents, payable two years after date, amounting together to the sum of one hundred and eighty-seven dollars and fifty cents.

Two notes drawn by the said Vincent Riellieux, of the same date and to the same order, one for the sum of two hundred and seventy-two dollars ninety-one cents and two-thirds, payable one year after date, and the other for an equal sum of two hundred and seventy-two dollars ninety-one cents and two-thirds, payable two years after date, amounting together to the sum of five hundred and forty-five dollars eighty-three cents and one-third.

Two notes drawn by said Toussaint Mossy, of the same date and to the same order, one for the sum of one hundred and thirty-six dollars and twenty-five cents, payable one year after date, and the other for an equal sum of one hundred and thirty-six dollars and twenty-five cents, payable two years after date, amounting together to the sum of two hundred and seventy-two dollars and fifty cents.

Two notes drawn by the said Elie Victor Jourdain, of the same date and to the same order, one for the sum of one hundred and eighty-one dollars and twenty-five cents, payable one year after date, and the other for an equal sum of one hundred and eighty-one dollars and twenty-five cents, payable two years after date, amounting together to the sum of three hundred and sixty-two dollars and fifty cents.

Two notes drawn by Messrs. Winter & McCall and Linton & Wilkins, and of the same date and to the same order, one for the sum of two hundred and seventy-two dollars ninety-one cents and two-thirds, payable one year after date, and the other for an equal sum of two hundred and seventy-two dollars ninety-one cents and two-thirds, payable two years after date; amounting together to the sum of five hundred and forty-five dollars eighty-three cents and one-third.

Two notes drawn by said Alexander Labranche, of the same date and to the same order, one for the sum of two hundred and seventy-two dollars ninety-one cents and two-thirds, payable one year after date, and the other for an equal sum of two hundred and seventy-two dollars ninety-one cents and two-thirds, payable two years after date; amounting together to the sum of five hundred and forty-five dollars eighty-three cents and one-third.

Two notes drawn by the said James Pitot, in the name and as agent

and attorney in fact of Jeanne Bordier, wife Petit, of Bertrand Gravier, junior, and of Jeanne Gravier, of the same date and to the same order, one for the sum of four thousand four hundred and forty-eight dollars and seventy-five cents, payable one year after date, and the other for an equal sum of four thousand four hundred and forty-eight dollars and seventy-five cents, payable two years after date, amounting together to the sum of nine thousand six hundred and ninety-seven dollars and fifty cents.

Two notes drawn by Barthélemy Lafon, in the name and as testamentary executor of late Pierre de la Bigarre, of the same date and to the same order, one for the sum of four hundred and seventy
323 dollars, payable one year after date, and the other for an equal sum of four hundred and seventy dollars, payable two years after date, amounting together to the sum of nine hundred and forty dollars.

For all which notes the honorable Joseph Roffignac, in his official capacities, gives discharge to the said donors, provided the same be paid at their maturity.

And as to the said Manette St. Amand, free woman of color, herein appearing, and donor in the present act, she preferred to exempt herself from furnishing her two notes of one hundred and fifty-five dollars each, at the term of one and two years as aforesaid, and to avoid giving a special mortgage on the lot number twelve on the plan hereto annexed, and measuring thirty-one feet front and the depth specified on the said plan, which she possesses on the said batture, to pay immediately her respective share, amounting to three hundred and ten dollars, into the hands of the honorable Joseph Roffignac, in his official capacities, who acknowledges having received the said sum of three hundred and ten dollars for the two notes of one hundred and fifty-five dollars each, payable one and two years after date, that the said Manette St. Amand would have had otherwise to furnish, hereby declaring the said Joseph Roffignac to give, by these presents, to the said Manette St. Amand, good and valid discharge for said respective share of three hundred and ten dollars. And to secure the payment of the said notes at their respective maturity, the said donors declare giving in their own right, respectively, a special mortgage in favor of the mayor, aldermen, and inhabitants of New Orleans on the following lots, to wit:

The said Edward Livingston has mortgaged as above mentioned:

1. The lot No. one of the plan hereto annexed, having one hundred and forty-two feet eight inches front on the depth specified on the said plan;

2d. The lot number 20 of said plan, having two hundred and ten feet front on the depth aforesaid;

3d. The lot No. twenty-one of the said plan, having two hundred and forty-two feet front on the depth aforesaid;

4th. The lot number twenty-two of the aforesaid plan, having two hundred and twenty feet front on the depth aforesaid;

5th. The three-fourths of lot number twenty-four of the said plan, which he possesses in common with the heirs of La Bigarre, the said lot having three hundred and thirty-two feet front on the depth above mentioned; and,

6th. Finally, the three-fourths of lot number twenty-five of the said plan, which he possesses in common with the same heirs, which lot has forty-four feet front on the depth aforesaid. The whole to secure the payment of ten thousand nine hundred and sixty-six dollars sixty-six

cents and two-thirds, amount of the notes above mentioned, drawn by him as aforesaid.

The said Jean Gravier has mortgaged in the same manner the one-fourth of the lot number twenty-three, designated on the aforesaid plan, which he possesses in common with the heirs of Gravier, the said lot having four hundred and ninety-six feet front on a depth as specified on the aforesaid plan; and this to secure the payment of the sum of one thousand two hundred and forty dollars, amount of the notes drawn by him as aforesaid.

The said Louis Barthélemy Macarty has mortgaged in the same manner the lot number sixteen of the said plan, having thirty-one feet front on the depth specified on said plan, and this to secure the sum
324 of three hundred and ten dollars, amount of the notes drawn by him as aforesaid.

The said Christophe Toledano has mortgaged, as aforesaid, the lot number eighteen of the said plan, the said lot having twenty-two feet nine inches front on the depth specified on said plan, and this to secure the payment of two hundred and twenty-seven dollars and fifty cents, amount of the notes drawn by him as aforesaid.

The said Vincent Rillieux has mortgaged likewise the lot number ten of the said plan, having fifty-four feet seven inches front on the depth specified on said plan, to secure the payment of five hundred and forty-five dollars eighty-three cents and one-third of notes drawn by him as aforesaid.

The said Toussaint Mossy has mortgaged in the same manner the lot number nine of the said plan, measuring twenty-seven feet three inches front on the depth specified on said plan, to secure the payment of the two hundred and seventy-two dollars and fifty cents of notes drawn by him as aforesaid.

The said Elie Victor Jourdain has mortgaged in the same manner the lot number fourteen of the said plan, measuring thirty-six feet three inches on the specified depth on the plan, to secure the payment of three hundred and sixty-two dollars and fifty cents of notes drawn by him as afore'aid.

The said McCall & Linton, in the name of their partnership of Winter & McCall and of Wilkins & Linton, have mortgaged the lot number six of the said plan, measuring fifty-four feet seven inches front on a depth specified on the said plan, to secure the payment of the five hundred and forty-five dollars eighty-three cents and one-third of notes drawn by them as aforesaid.

The said Étienne Mazureau, as agent and attorney in fact of the said Alexandre Labranche, has mortgaged, in the same manner, the lot number five of the said plan, measuring fifty-four feet seven inches front on the depth specified on the said plan, to secure the payment of the five hundred and forty-five dollars eighty-three cents and one-third of notes drawn by the said Alexandre Labranche as aforesaid.

The said James Pitot, in his official capacities, has mortgaged, in the same manner, the lots numbers two, four, six, eight, eleven, thirteen, fifteen, seventeen, nineteen, and three-fourths of the lot number twenty-three of said plan, measuring together eight hundred and forty-five feet nine inches on the depth specified on said plan, to secure the payment of nine thousand six hundred and ninety-seven dollars fifty cents of notes drawn by him in his said capacities as above stated.

And the said Barthélemi Lafon, in his official capacities, has mortgaged in the same manner the one-fourth of the lots number twenty-four and twenty-five of the said plan, owned in common by the heirs of De la Bi-

garre and Livingston, the said portions of lots having together ninety-four feet front on the depth specified on the aforesaid plan, and this to secure the payment of nine hundred and forty dollars subscribed by the said Lafon in his aforesaid capacity.

And for the inscription of the present mortgages, and for the registry of the donation contained in the present act, all necessary powers are given to the bearer of a duly-authenticated copy thereof.

Done and passed in my office, on the day, month, and year above mentioned, in presence of Messrs. Jean Baptist Desdunes, jr., and Jean Bte. Donatien Augustin, witnesses, by me requested so to be, and
325 residing in this city, who, together with the said appearers and me, notary, have signed these presents; the whole after due reading thereof.

(Original signed:)

EDW. LIVINGSTON.
E. MAZUREAU,
For JEAN GRAVIER.
A'DRE LABRANCHE.
T. MOSSY.
TOLEDANO.
L. B. MACARTY.
LAFON,
Testamentary Executor of Pierre de la Bigarre.
MANETTE ST. AMAND.
J. ROFFIGNAC, *Mayor.*
VINCENT RILLIEUX.
J. PITOT,
Agent and Attorney in Fact of the Heirs of Gravier.
WINTER & McCALL.
WILKINS & LINTON.
E. V. JOURDAIN.
J. B. DESDUNES (son).
J. B. D. AUGUSTIN.
H. LAVERGNE,
Not. Pub.

STATE OF LOUISIANA,
Parish of Orleans:

I, Andrew Hero, jr., a notary public, and the custodian of natarial records in and for the parish and city of New Orleans, duly commissioned and qualified, do certify the foregoing as being a true copy of the original act extant in the records of Hugues Lavergne, formerly a notary public in this city, and whose records I hold as custodian thereof.

As attest my hand and seal at New Orleans, as custodian aforesaid, this thirteenth day of October, A. D. eighteen hundred and seventy.

(Signed) ANDREW HERO, JR.,
Custodian of Notarial Records.

I certify that the foregoing is a true and correct translation of the document marked A E. filed January 10, 1871, in the eighth district court for the parish of Orleans, in the matter of the New Orleans, Mobile and Chattanooga Railroad Company vs. The City of New Orleans, No. 19 of the docket of said court.

(Signed) A. L. VILLERÉ.

Mew Orleans, February 27, 1871.

Document A F.—Compromise between municipality No. two and the owners of the batture in front thereof.—Filed January 10, 1871.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that this day, before me, Henry Breton Cenas, a notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared Alexander Brother, Henry Renshaw, and Charles Dabney Yan-
326 cey, of the said city of New Orleans, composing the finance committee of the council of municipality number two of said city, and herein acting in their capacity as such, under the authority of a resolution of said council adopted on the seventeenth day of June instant, a duly certified copy whereof is hereunto annexed for reference, parties hereto of the first part.

And with them also came and appeared the persons hereinafter named, parties hereto of the second part, being the original parties, or the agents, heirs, and legal representatives of the parties to a certain act, commonly called a donation, passed on the twentieth day of September, eighteen hundred and twenty, before Hugues Lavergne, then a notary public in this city, between the said original parties, as the actual possessors of the batture in front of the faubourg St. Marie, and the mayor, aldermen, and inhabitants of the city of New Orleans, which said act is now to be found in the office of Theodore O. Stark, a notary public in this city, the successor of William Christy, who was the successor of the said Lavergne, to wit:

First. Christophe Toledano, of this city, one of the original parties to said donation.

Second. Victor Roumage and Ambroise A. Pardo, of this city, testamentary executors of the late Louis B. Macarty, late of this city, deceased, and herein acting in their capacity as such.

Third. The following, comprising all the heirs and legal representatives of the late Elie Victor Jourdain, late of this city, deceased, to wit:

1st. John B. V. Jourdain, of lawful age, son of the said deceased;

2d. Mistress Leonide Jourdain, daughter of the said deceased, and wife of Adelard Blondeau, of this city, she being of lawful age, and herein assisted by her said husband;

3d. Elie Farram Lavillebeuvre, son of Jean U. Lavillebeuvre by his late wife, the Mistress Elizabeth Chandée Jourdain, daughter of the said deceased, the said appearer being of lawful age;

4th. Mistress Aspasie Lavillebeuvre, daughter of the said Jean U. Lavillebeuvre and his said wife, and now wife of Samuel James Peters, junior, she being of lawful age, and herein assisted and authorized by her said husband;

5th. Mistress Stephanie Josephine Lavillebeuvre, daughter of the said Jean U. Lavillebeuvre and his said late wife, she being above the age of puberty, and the wife of Victor J. Forstall, and by him herein duly assisted and authorized; and,

6th. The said Jean U. Lavillebeuvre, herein acting in the capacity of natural tutor to his minor children, Suzanne, Eugénie, and Jourdain Lavillebeuvre, the lawful issue of him and his said late wife, all residing in this city, and composing the whole of the heirs of the said late Elie Victor Jourdain, as aforesaid.

Fourth. The following, comprehening the whole of the heirs and legal representatives of the late Vincent Rillieux, late of this city, deceased, to wit:

1st. James P. Freret, William Freret, John Freret, and Mistress Eugènie Freret, of lawful age, wife of James Stuart, and herein duly assisted and authorized by her said husband, the said appearers being the sole heirs of their late mother, whose name was Eugènie Rillieux, and sister of the said late Vincent Rillieux;

2d. Mistress Heloïse Marie Rillieux, widow of the late L. M. Reynaud, late of this city, deceased, and sister of the said late Vincent Rillieux;

3d. The following, being the children and the grandchildren of
327 the late Mistress Marie Desirée Rillieux, sister of the said Vincent Rillieux, and late wife of Jean Baptiste Étienne Germain Musson, of this city; Michel Musson, of lawful age; Mistress Anne Eugènie Musson, wife of Charles Francis Louis Defaure, Comte de Rochefort, residing in France, and herein represented by her brother, the said Michel Musson, by virtue of an act of procuration passed before J. C. Brent, consul of the United States at Paris, on the twenty-third day of September, eighteen hundred and thirty-nine, and annexed to an act passed before Adolphe Mazureau, a notary public in this city, on the sixteenth day of December, eighteen hundred and thirty-nine; Eugène Musson, now in California, herein represented by his brother, the said Michel Musson, by virtue of an act of procuration passed before L. Hermann, then a notary public in this city, on the second day of March, eighteen hundred and forty-nine; the five minor children of Mistress Marie Célestine Musson, wife of Laurent Pierre Augustin Hyacinthe Du Gas, of Paris, now deceased, and herein represented by their grandfather, the said Germain Musson; Henry Germain Musson, now residing in Europe, herein represented by his brother, the said Michel Musson, by virtue of an act of procuration passed before A. Gillors, chancellor-general of the French legation at Athens, Greece, on the nineteenth day of September, eighteen hundred and forty-three, a certified copy whereof is annexed to an act passed before William Christy, then a notary public in this city, on the thirteenth day of May, eighteen hundred and forty-four;

4th. Mistress Marie Antoinette Rillieux, a sister of the said late Vincent Rillieux, and widow of the late Michael Smith, deceased, now residing in England, and herein represented by the said Germain Musson, by virtue of an act of procuration passed before Lairtullier and his colleague, notaries in Paris, on the thirty-first day of August, eighteen hundred and thirty-seven, and annexed to an act passed before Adolphe Mazureau, a notary public in this city, on the tenth day of January, eighteen hundred and thirty-eight; and

5th. Mistress Caroline Uchette Landreaux, daughter of the late Melicerte Rillieux, sister of the said Vincente Rillieux and of the late Honoré Landreaux, deceased, and now wife of U. Kernion, she being herein duly assisted and authorized by her said husband.

Fifth. The following, composing the whole of the heirs and legal representatives of the late Toussaint Mossy and of his late wife, Mrs. Marie Aimée St. Amand, deceased:

1st. Jules Mossy;

2d. Hypolité Mossy;

3d. The minor children of the late Toussaint Mossy, junior, deceased, to wit: Rose, Aimée Eliza, Eugènie, and Victor Mossy, herein represented by their mother and natural tutrix, Mrs. Eliza Amand, widow first of the said Toussaint Mossy, junior, and second of the late Michel Rey, deceased; and

4th. The above-named three branches, as heirs of their late brother,

the late Paul Mossy, deceased, and of his daughter, the late Célestine Mossy, a minor, who died, leaving as her only and forced heir her grandmother, Mrs. Caroline Trudeau, widow of the late Thomas Urquhart, deceased, the said grandmother having renounced her claim to the said succession by an act passed before A. Ducatel, a notary public in this city, on the thirteenth day of November, eighteen hundred and fifty.

Sixth. The following, comprehending the whole of the heirs and legal representatives of the late John Linton, deceased:

1st. Stephen Duncan Linton, of lawful age;

2d. Mistress Charlotte Bingamin Linton, of lawful age, and
328 wife of Francis Surget, junior, of Natchez, Mississippi, and herein duly assisted and authorized by her said husband, here present and approving; and

3d. Washington Jackson, jr., herein acting as the agent and attorney in fact of Stephen Duncan, of Natchez, aforesaid, and guardian of the minors Mary Atwell Linton and John Linton, by virtue of the annexed power of attorney.

Seventh. Winter & McCall:

1st. Henry McCall, one of the members of the late firm of Winter & McCall, original parties to the aforesaid contract or compromise, and herein acting for and in behalf of himself; and

2d. George W. Christy, herein acting as the agent and attorney in fact of Mrs. Mary P. Winter, only daughter and heir of the late Joseph Winter, late partner of the said McCall, of lawful age, and now the wife of Henry W. Whiting, of the city of New York, by virtue of the annexed power of attorney.

Eighth. Mistress Louise Livingston, widow of the late Edward Livingston, and Mistress Cora Livingston, the only child of the said Edward Livingston, and now wife of Thomas P. Barton, both herein represented by Randall Hunt, who acts by virtue of the annexed power of attorney, dated on the fourteenth of January last, 1851.

Ninth. Miss Amarylis Laura de la Bigarre and Mrs. Maria Louisa de la Bigarre, wife of Philip N. Searle, both of lawful age, and the only surviving heirs of their father, the late Peter de la Bigarre, both represented by Robert N. Ogden and Abner N. Ogden, who act by virtue of the annexed power of attorney, dated on the tenth of April, 1850.

Tenth. The heirs of Bertrand Gravier:

1st. Jacques Gravier, son and only heir of Bertrand Gravier, jr., and only testamentary heir of Jeannie Gravier, and heir for one-half of the late Jean Gravier, late of this city, herein represented by Henry R. Denis, acting under and by virtue of the annexed power of attorney, a duly-certified copy of a power of attorney deposited in the office of Adolphe Mazureau, a notary public in this city, on the twenty-ninth of October, 1850;

2d. Jeannie Bordier, wife of Héllant Petit, acting in her own name and as heir for one-half of the said late Jean Gravier, and herein represented by Carl Kohn, who acts by virtue of a power of attorney duly recorded in the office of the said Mazureau, notary, on the twelfth day of July last past, a duly-certified copy of which is hereto annexed.

Eleventh. The heirs of the late Alexander Labranche:

1st. Octave Labranche;

2d. Alcée Labranche;

3d. Adaline Labranche, widow of Drausin Labranche;

4th. Félicitie Labranche, widow of Edmond Fortier; all represented herein by the said Henry R. Denis, by virtue of a power of attorney

passed before François Cheuz, recorder and ex-officio notary public in and for the parish of St. Charles, in this State, on the thirteenth of December, 1850, a duly-certified copy whereof is hereunto, on the margin, annexed for reference;

5th. The heirs of the late Louis Labranche, son of Alexander Labranche, Marie Louise Metéyé, Alexander Philip Auguste Metéyé, and Richard Francis Camte Metéyé, minor children of the late Madame Labranche, daughter of the said Louis Labranche, and of François Metéyé, her husband; said minors herein represented by the said Henry R. Denis, by virtue of a power of attorney executed under private signature on the twenty-fourth day of June, 1851, and duly acknowledged before Philip Lacoste, notary in this city, on the first day of July instant, and hereto annexed.

329 Twelfth. And, in fine, the several persons whose signatures are hereunto respectively subscribed, being the other original parties to the compromise or contract of the twentieth day of September, eighteen hundred and twenty, hereinbefore mentioned or referred to, or the duly authorized agents, heirs or legal representatives of the same.

Which said appearers declared, that whereas, by the aforesaid act of the twentieth of September, eighteen hundred and twenty, the new levee, now constituting New Levee street, together with all the batture then formed, or which might thereafter be formed, on the outside of said levee, extending to the water edge of the river Mississippi, along the front of the faubourg St. Mary, from the city line below to the property of W. W. Montgomery above, were ceded and given to the city of New Orleans as property inalienable and not liable to seizure, but to be forever left open for the use to which it was naturally destined; which said property, from that period to the present time, has remained in that condition, under the administration and at the expense of the city of New Orleans and of the second municipality thereof;

And whereas the said batture has in the mean time increased to such a degree as to be no longer required in its full extent for the purpose contemplated by the parties to the said act;

And whereas the council of the municipality number two did on the sixteenth day of June, eighteen hundred and forty-six, approve a plan drawn by George F. Dunbar for laying out three new streets, through the whole extent of said batture, between New Levee street and the Mississippi River, extending from Montgomery's property down to Common street, and did propose to sell and dispose of the lots of ground as designated on the said plan;

And whereas the said batture is increasing every year in extent and becoming less adapted to the object for which it was intended by the act of the twentieth of September, 1820, and instead of being an accom'odation to the public and a convenience to commerce, retards business and increases the expenses of the merchants and of the community in general:

Now, therefore, the said appearers having agreed to alter its destination, moreover declared that they had agreed and stipulated, and do, by these presents, in their several capacities aforesaid, agree and stipulate as follows, to wit:

First. That the streets, to be named Fulton street, Front street and Delta street, shall be laid out and opened through the said batture, according to the plan drawn by the said Dunbar and approved by the council, with this difference, viz: that Fulton street and Front street shall be each sixty feet wide, and lots formed, to be numbered and to

have such form and dimensions as set forth on the plan prepared by J. A. Beard, auctioneer, copies of which plan are deposited in this office for reference.

Second. That the lots composing the squares or islets between the three said new streets shall be sold at auction by Beard & May, auctioneers of this city, or by such other auctioneer as may be named by the council of municipality number two and the parties to this act; and it shall be made the duty of such auctioneer or auctioneers to
330 draw up a formal proces-verbal and to sign the same, and to deposit a duplicate thereof with the undersigned notary. And acts of sale shall be passed before the said notary, and signed by the finance committee of the said council and the purchaser or purchasers, and the acts of sale thus signed shall be binding upon all the said parties of the second part as vendors. That the said auction sales shall be made after advertisements in at least two newspapers published in New Orleans, and shall be continued from time to time until all the lots are sold. That the lots on the square between New Levee and Fulton streets shall be sold in the winter of 1851 and 1852, unless the sale shall be postponed by account. That the lots in the squares between Fulton and Front streets shall be sold in the winter of 1852 and 1853, unless the parties to this act shall consent and agree to some other time of sale—with the exception of the two squares bounded by Poydras, Fulton and Girod streets and the river, which are not to be sold until, in the opinion of the council of municipality number two, they can be improved without interfering with the space necessary for the convenience of commerce at that part of the landing. That the lots in the squares between Front and Delta streets shall be brought into the market and sold whenever the council of municipality number two shall determine the same to be susceptible of private ownership and no longer necessary for the convenience of commerce. That the said lots shall be sold on the following terms and conditions, to wit: one fifth of the price to be paid in cash, and the balance in equal installments (divided into coupons, if necessary), in one, two, three and four years, with six per cent. interest from the day of sale, and eight per cent. per annum after due; the payment whereof shall be secured by special mortgage on the property sold.

Third. That immediately after the sale of the property aforesaid, or any portion thereof, whether in cash or notes, or both, after deducting the necessary costs and expenses of the sale above, shall be divided and distributed in the manner following, to wit: one third shall be paid and delivered to the persons authorized by law to receive the same, to be applied to the payment of the old city debt or general sinking-fund of the city of New Orleans. One third shall be paid and delivered to the original parties to the contract of the twentieth of September, eighteen hundred and twenty, or to the heirs and legal representatives thereof, whose assent is given to the present agreement, each one to respectively receive in proportion to the front of the lots or portions of ground originally owned by him, as shown by the said contract. And the remaining one-third of said proceeds shall be paid and delivered to the treasurer of the said municipality number two for the exclusive use and benefit of said municipality.

Fourth. And it is, moreover, well understood and agreed to by and between the said parties that the said one-third part of the proceeds aforesaid coming to the said parties of the second part shall be paid over to each of them, in the proportions hereinbefore set forth, by the undersigned notary, as soon as practicable after the sale aforesaid; it being well understood also that in the said three grand divisions of the

said proceeds the notes to be divided shall be so arranged as to be as nearly as possible equalized between the three said parties, so far as the responsibility and standing of the several drawers thereof is concerned.

331 Fifth. That the three squares or lots of ground between North Market and South Market streets, and designated on the plans as markets, shall belong to the municipality number two, upon the condition that the said municipality shall erect thereon market-houses or other public buildings, or shall leave the same open as public squares, and shall, in no event, dispose of or sell the same as private property; and that all the portion of the batture between Delta street and the river Mississippi above Lafayette street to the line of Montgomery's property and all that portion of the batture between Front street and the river Mississippi from Lafayette street down to Canal street shall be and is hereby vested in perpetuity and full ownership in the said municipality number two, in favor of whom the appearers to this act hereby cede and relinquish forever all their claims in and to the said batture, as well as all and every enlargement thereof or accretion thereto by new formations.

And finally, it is well understood and agreed to by and between the said contracting parties that this agreement or compromise is in no manner to change, alter, or prejudice the position or claims of any kind or nature whatsoever which may now exist, or which may hereafter arise, among or between any of the said parties of the second part to any particular amount or portion of the said one-third of the proceeds of the sale of the property aforesaid.

Thus done and passed in my office at the city of New Orleans, in the presence of Auguste Commandeur and Charles Frederick Barry, witnesses of lawful age and domiciliated in this city, who hereunto subscribe their names, together with the said parties and me, notary, on this thirtieth day of June, in the year of our Lord one thousand eight hundred and fifty-one.

(Original signed:)

A. BROTHER,
HENRY RENSHAW,
C. D. YANCEY,
Committee.
GEO. W. CHRISTY.
S. DUNCAN LINTON.
RANDELL HUNT.
M'L. MUSSON.
EUGENIE STEWART.
JAMES STEWART.
A. GRAILHE.
BERNOUDY.
MILLAUDON.
HENRY J. FORSTALL,
As Syndic of Rillieux.
J. B. JOURDAIN.
LEONIDE BLONDEAU.
A. BLONDEAU.
VICTOR J. FORSTALL,
Tuteur de sa fille.
SAMUEL J. PETERS, jr.

BEN. TOLEDANO.
A. COMMANDEUR.
CHS. FREDERICK BARRY.
C. KOHN.
WM. FRERET.
JOHN FRERET.
JAS. P. FRERET.
HENRY MCCALL.
G. MUSSON.
TOLEDANO.
HENRY R. DENIS.
E. F. LAVILLEBEUVRE,
Per pro V. J. FORSTALL.
JULIEN COLVIS,
Assignee of Succ'n L. B. Macarty,
By J. P. BENJAMIN, *Attorney.*
M. E. FORSTALL.
ASPASIE E. PETERS.
J. U. LAVILLEBEUVRE.
EUGENIE TOLEDANO,
Née Lavillebeuvre.

H. B. CENAS,
Not. Pub.

332 STATE OF LOUISIANA,
Parish of Orleans:

And again, to wit, on this twenty-fifth day of March, A. D. eighteen hundred and fifty-two, personally came and appeared Alexander Brother, Henry Renshaw, and Charles D. Yancey, members of the finance committee of the municipality number two of this city, named in the foregoing act of compromise, and acting in their capacities as such, who declared that whereas doubts seem to have arisen as to the true construction of the provisions or clauses in the said foregoing act of compromise in relation to the division of the one-third of the proceeds of the sales of the batture forming the object of said compromise, accruing to the original donors or their legal representatives, they, the said appearers, therefore now declare that, in their opinion, it is the intention and true meaning of the said clauses that the said one-third of the said proceeds shall be divided among the said donors, or their legal representatives, who have signed the said foregoing act of compromise, according to the extent of the ground, or the front measurement thereof, to which the said donors, or their legal representatives, have preferred or set up claims or pretensions respectively; that is to say, that each of the original donors or proprietors shall receive one-third of the proceeds of the sale of the land in front of his former property, and that the entire proceeds of the sale are not to constitute one common fund among all the donors.

Thus done and passed in presence of the undersigned notary and witnesses, who hereunto subscribe their names, together with the said appearers, on the day, month, and year above written.

(Original signed:)

A. BROTHER,
HENRY RENSHAW,
C. D. YANCEY,
Fin. Com. of Municipality No. Two.
CHAS. FREDERICK BARRY,
HENRY R. DENIS,
A. COMMANDEUR,
C. KOHN,
RANDELL HUNT,
Attorney for heirs of E. Livingston.
H. B. CENAS, *Not. Pub.*

Copy of resolution to issue bonds.—Filed January 10, 1871.

Copy of resolutions of the board of directors of the New Orleans, Opelousas and Great Western Rail' Company, passed on the seventeenth day of March, 1859.

1st. Resolved, That for the purpose of obtaining means for the further construction of the road, the president be, and he is hereby, authorized and instructed to issue two thousand bonds of the New Orleans, Opelousas and Great Western Railroad Company, dated first April, 1859, redeemable on the first April, 1889, for one thousand dollars each, bearing interest at the rate of eight per cent. per annum, payable semi-annually, in coupons attached to said bonds of eight pounds five shillings sterling, or forty dollars each, the principal of said bonds being made payable at their office in New Orleans, and the interest thereof being made payable at New Orleans, New York, or London, as the president may by his endorsement determine.

2d. Resolved, That the president be further authorized and instructed

to secure the payment of said bonds and the interest thereon by
333 a first mortgage on the first grand division of the railroad of the company, from Algiers (opposite the city of New Orleans) to Berwick's Bay, together with the land over which the said road is constructed, the equipments, appurtenances, rights, and franchises of the company, applicable to this portion of the road.

3d. Resolved, That such an amount of money as may be necessary to meet each semi-annual interest of the outstanding bonds of the company shall be provided for pro rata by monthly deposits in the Louisiana State Bank of this city, and entered as follows: "The New Orleans, Opelousas and Great Western Railroad Company's interest account;" and all funds so deposited shall be considered special, and shall not be used for any other purpose than for the payment by said bank of running interest on the bonds of the company as maturing. And the president is hereby authorized to sign an act of agreement with the president of said bank, binding the company as aforesaid.

4th. Resolved, That in case the Louisiana State Bank should decline to continue to be the agents of the New Orleans, Opelousas and Great Western Railroad Company, or in case the charter of said bank should expire, then the president of this company shall choose any other of the chartered banks in this city for the carrying out of the purposes of these resolutions.

NEW ORLEANS, *November* 17, 1868.

A true copy from the minutes of the record.

[SEAL.] (Signed) GEO. W. SQUIRES, *Secretary.*

Act of sale of New Orleans, Opelousas and Great Western Railroad Company by U. S. marshal to Chas. Morgan.—Filed January 10, 1871.

UNITED STATES OF AMERICA,
District of Louisiana:

Whereas I, F. J. Herron, late marshal of the United States for the district of Louisiana, by virtue of a writ of seizure and sale, to me directed by the honorable the circuit court of the United States for the fifth judicial circuit and district of Louisiana, in the suit entitled Charles Morgan vs. The New Orleans, Opelousas and Great Western Railroad Company, after having fulfilled and complied with all the previous legal requisites, did seize the following-described property, viz: The whole of the completed grand division of the New Orleans, Opelousas and Great Western Railroad between Algiers (opposite the city of New Orleans) and Berwick's Bay, now in full operation, constructed by the said company in pursuance of their charter, and being a distance of (80) eighty miles, together with the road-beds of the main tracks and branches, and also all the depots and lands specially appertaining to them; all the buildings, wharves, and all the equipments and franchises belonging and appertaining to this division of the road; and also all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils, implements, right of way, and effects generally, of every nature and description whatsoever, in and upon the said division of the said railroad, or in any wise attached or ap-
334 pertaining to the same, without any exception or reservation, among which is comprised certain landed property acquired for the use of the said railroad, more particularly described as follows, to wit:

A certain piece or portion of ground, situated in the parish of St.

Mary, on the west bank of the Bayou Bœuf, being across the whole depth of the lot of ground belonging to Hypolite Patout, beginning at the water's edge of Bayou Bœuf, at a point thirty-five feet south of the centre line of the said railroad company, thence parallel with the said railroad's centre line westwardly to the line of the property of said Patout and O. Landry, thence westwardly across said railroad sixty feet, thence parallel with said railroad line eastwardly to the water's edge of said bayou, thence southwardly along the margin of said bayou sixty feet to the place of beginning.

2d. A piece of ground having twenty-five feet front on said Bayou Bœuf by fifty feet deep on the upper or north side of said railroad and adjoining the piece or strip firstly above described, making the whole front on said bayou (85) eighty-five feet.

3d. All the improvements on said portions of land and the appurtenances thereof, and all the rights, ways, servitudes, privileges, and advantages thereunto belonging or in any wise appertaining.

That certain portion of a tract of land or plantation on Tiger Island, situate on the eastern bank of Berwick's Bay, acquired by the said company from R. B. & T. T. Brashear, and which formed a part of the tract of land acquired by R. B. & T. T. Brashear in 1842 from their father, Dr. Walton Brashear, by notarial act passed before J. A. Dumatrail, recorder parish of St. Mary, which act is referred to for particular certification of bounds and limits, to be used for a station-house, etc., not exceeding one acre of land.

That portion of land on the margin of Berwick's Bay extending a distance of one hundred and thirty feet above and two hundred feet below the centre line of the railroad, with the warves, sheds, and other buildings thereon.

All that portion of land on the margin of Berwick's Bay occupied for a coal-yard wharf, and for a cattle-landing, and for the uses and purposes connected with said railroad.

The quantity of land for a station-house, water-tank, or depot, and not exceeding one acre in superfices, on the immediate line of the road, and making part of a tract formerly owned by Charles O'Brien, situate on the northern bank of Bayou Bœuf, in the parish of St. Mary, and bounded on the east by the lands of John Collins, and on the west by lands of Young.

A quantity of land for a station-house, water-tank, or depot, and having one acre in superfices on the immediate line of the road, and being part of a tract of land formerly owned by J. A. Wofford, on the north bank of Bayou Bœuf, in the parish of St. Mary, bounded on the east by the land of John Tarleton, and on the west by land of J. Y. Saunders.

A quantity of land, one acre in superfices, on the immediate line of the road, for a station-house, water-tank, or depot, and making part of a tract of land owned by John Tarleton in 1853, and situated on the north bank of Bayou Bœuf.

A quantity of land for a station-house, water-tank, or depot, on the line of said railroad, and making part of a certain tract of land owned in 1853 by J. Y. Saunders, and situated on the north bank of Bayou Bœuf, parish of St. Mary, and bounded on the east by lands of J. A. Wofford, and on the west by lands of Charles Bailiss.

A certain portion of ground situate in the parish of Terre Bonne,
335 in this State, being of a triangular form, and bounded on one side by the line of the road of said New Orleans, Opelousas and Great Western Railroad Company, and on the other side by property of

Daniel Morrison, and on the third line by the public road leading along Bayou l'Outre to Attakapas; said piece or portion of land together with all the rights, ways, servitudes, privileges, and advantages thereunto belonging or in any wise appertaining.

A lot or tract of land with a front of one hundred and twenty-five feet, or sixty-two feet six inches on each side of the centre line of the railroad embankment, on the public road, by a depth of three hundred feet between parallel lines running parallel with the centre line of the railroad and westward from the Bayou Terre Bonne. Also another lot or tract of land fronting on the Bayou Terre Bonne five hundred feet, or two hundred and fifty on each side of the centre line of said railroad, and comprising the whole of the space between said front and the public road.

The following described portions of land, formerly belonging to Philip B. Key, and situated and being in the La Fourche swamp land, on Bayou Bleu, and bounded as set forth and described in a notarial act passed before J. G. White, notary, dated Thibodeaux on third of May, 1854, between Philip B. Key and the said New Orleans, Opelousas and Great Western Railroad Company; one of said tracts containing forty-two thousand superficial feet, and the other containing about seventy thousand four hundred superficial feet.

A certain lot or tract of land situated on Bayou des Allemands, and upon the upper or right side (looking west) of the road where it strikes said bayou, which was acquired to construct and maintain wharves, sheds, or such other buildings as the said railroad company might require, or for any other purpose whatsoever. Said lot or tract of land is described as follows, to wit: Beginning at a point in the centre of the main track of the railroad, at the east end of the revolving drawbridge, thence northeastwardly along the centre of said main track one hundred feet; thence northwestwardly, at right angles, to the line of the railroad (250) two hundred and fifty feet; thence in a parallel line to the railroad southwestwardly to the bank of the Bayou des Allemands, thence along the margin of said bayou southeastwardly to the point of beginning.

A certain quantity of land (30) thirty feet in width by one hundred feet in depth, parallel and adjoining the said railroad, on the lower side of the Destrehan or Harvey's Canal, and on the side nearest to the river, and commencing on the line of said canal, acquired to erect station-house, water-tank, or depot and house for bridge-keeper.

All those portions of ground lying and being in the town of Brooklyn, near Gretna, as laid out by the said New Orleans, Opelousas and Great Western Railroad Company, and represented in a plan No. 40, made by the authority of said company, and deposited in the office of Selim Magner, a notary public in and for the city of New Orleans and parish of Orleans, which said portions of ground are composed, 1st, of all the squares represented in said plan, and lying between Front street and extending to the Mississippi River; and, 2d, of all the space extending entirely across the said town of Brooklyn, and from Sixth street to the Mississippi River, as represented, delineated, and laid down on the said plan, as reserved for the use of the said New Orleans, Opelousas and Great Western Railroad Company, and bounded by the squares and fractional squares numbered on the said plan by the numbers 7, 8, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 23, and 24, which said portions of ground are embraced in and make a part of a certain tract
336 of land or plantation situate on the right bank of the Mississippi River, in the parish of Jefferson, about two miles above the city

of New Orleans, fronting partly on the first and partly on the fourth districts of New Orleans, having four arpents eleven toises front on the river Mississippi by forty-five arpents in depth, between parallel lines, with all the improvements thereon.

A certain portion of ground situate in the town of Gretna, in the parish of Jefferson, in square bounded by Fourth and Fifth streets, Lafayette avenue and the village of Mechanickham, measuring thirty feet front on Fourth street by nineteen feet in depth on the line nearest to Mechanickham, and seventeen feet three inches in depth on the side nearest to Lafayette avenue.

A certain portion of ground situate in the town of Gretna, in the parish of Jefferson, being part of a lot designated by No. 14 in square No. 7 of the plan of said town, drawn by E. H. Springbet, architect and surveyor, on the twenty-fourth of June, 1839, and deposited in the book of plans of J. B. Marks, notary, in New Orleans. Said portion of ground measures thirty-nine feet two inches and five lines front on Fourth street by thirty feet in depth on the side nearest Mechanickham, and nineteen feet two inches on the line of property belonging to Jacob Saunders.

A certain portion of ground in the village of Mechanickham, in the parish of Jefferson, in square designated by No. 9 on a plan made by H. Grand, second February, 1842, and deposited in the office of L. R. Kenny, late notary. Said square is bounded by Third, Fourth, and Cuvier streets and Copernic avenue. Said portion of ground measures one hundred and twenty-five feet front on Fourth street by five feet ten inches in front and in depth on Copernic avenue, and ten feet six inches in depth on the line nearest Cuvier street, and forms part of a lot of ground designated by lot No. 1 of said square No. 9.

A certain portion of ground situate in the village of Mechanickham, in the parish of Jefferson, in square designated by No. 13, bounded by Fourth street, Fifth and Lavoisier streets, and the dividing line of Gretna and Mechanickham, as represented on a certain plan made by H. Grant, dated second February, 1842, and deposited in the office of the above notary. Said portion measures seventy-three feet ten inches and two lines front on Fourth street by twenty feet ten inches on the side nearest to Lavoisier street, and twenty feet ten inches on the dividing line of Gretna and Mechanickham, and forms part of lot No. 2, of square No. 13, as per said plan.

A certain portion of ground situate in the village of Mechanickham, in the parish of Jefferson, being part of a lot of ground designated by No. 1, in square No. 7. Said lot forms the corner of Lafayette avenue and Fourth street. Said portion measures, in English measure, one hundred and fifty feet front on Fourth street by seventeen feet three inches on the dividing line of property belonging to Honore Dost, F. M. C., and sixteen feet two inches in depth and front on Lafayette avenue.

A certain portion of ground situate in the town of Gretna, parish of Jefferson, being a portion of lots 1 and 2 in square designated by No. 8 on a plan of said town, bounded by Lafayette avenue, Fourth and Fifth streets, and the lower line of said town. The said two lots of ground adjoin each other, and measure each thirty feet front on Lafayette avenue by a depth of one hundred and fifty feet between parallel lines. No. 1 forms the corner of Lafayette avenue and Fourth street. All American measure.

A certain portion of ground situate in the village of Mechanickham, in the parish of Jefferson, in square bounded by Fourth, New-
337 ton, Fifth, and Lavoisier streets, per plan of thirty-five lots of

ground situate in said village, made by A. De Young, architect, dated twenty-seventh June, 1851, and deposited in the office of L. R. Kenny, late notary. Said portion of ground measures one hundred and ten feet front on Fourth street by (16) sixteen feet in front and depth on Lavoisier street, twelve feet in depth on the dividing line of lot No. 13, and one hundred and ten feet, more or less, on the rear line; said portion of ground being a part of lot No. 10, forming the corner of Lavoisier and Fourth streets.

A certain strip of ground formerly a portion of lot No. 7, measuring in length one hundred and seventy-five feet, or the depth of said lot, situate on Fourth street, in square No. 9, in the village of Mechanickham, in the parish of Jefferson. The said strip of land measures on Cuvier street twelve feet, and at the other end of said strip of land, on Fourth street, it measures ten feet.

A certain piece or portion of ground situate in Mechanickham, parish of Jefferson, in the square bounded by Third, Fourth, Copernic avenue, and Cuvier streets, making part of lot designated as No. 1 of square No. 9 on a plan drawn by H. Grant, surveyor, on February 2, 1842, deposited in the office of L. R. Kenny, late notary for the parish of Jefferson, which piece measures one hundred and twenty-five feet front on the street or railroad, twenty-seven feet in depth on Copernic avenue, and twenty-seven feet in depth on the line of property of J. S. Whitaker.

A certain piece or portion of ground situate in Mechanickham, parish of Jefferson, in the square bounded by Lavoisier, Newton, Fourth, and Fifth streets; said piece or portion measuring one hundred and ten feet on Fourth street, twelve feet deep from the line of the street and front on Newton street, and fourteen feet deep from the line of the street next to the property of G. Hahn.

A certain portion of ground situate in Mechanickham, parish of Jefferson, forming part of lot designated by No. 4 of square No. 11, bounded by Third, Fourth, Lavoisier, and Newton streets, as represented on a plan of H. Grant, surveyor, dated second February, 1842, deposited in the office of the late L. R. Kenny, notary for the parish of Jefferson, which portion measures twenty-five front on Fourth street, six feet in depth, from the line of the street adjoining property of J. Gering, and five feet in depth from the line of the street on the side adjoining property of F. Kraume.

A certain piece or portion of ground situate in Mechanickham, parish of Jefferson, forming part of lot No. 12 in square No. 15, bounded by Newton, Fourth, and Fifth streets and Copernic avenue, as represented on a plan of A. De Young, surveyor, on the twenty-third of January, 1851, deposited in the office of J. R. Bargsbede, recorder and ex-officio notary for the parish of Jefferson, on the twenty-sixth of March, 1851, which portion of ground measures thirty feet front on Fourth street or the railroad, five feet deep from the line of the street on a line adjoining property of F. Anselm, and six feet deep from the line of the street on a line adjoining property of P. Vollner.

A certain piece or portion of ground situate in Mechanickham, parish of Jefferson, forming part of the lot of ground designated by No. 12 of square bounded by Lavoisier, Fifth, Newton, and Fourth streets, as represented on a plan deposited in the office of Theodore Guyol as plan No. 312, which portion of ground measures thirty feet front on Fourth street, fourteen feet in depth from the line of the street, and next to the property of G. Spangenburg, and thirteen feet in depth from the line of the street, on the lower line.

338 A certain piece or portion of ground situate in Mechanickham, parish of Jefferson, forming part of the lot designated by No. 4 of square No. 11, bounded by Third, Fourth, Lavoisier, and Newton streets, as represented on a plan of H. Grant, surveyor, dated second February, 1842, deposited in the office of L. R. Kenny, late notary for the parish of Jefferson, which portion of ground measures twenty-five feet front on Fourth street, seven feet from the line of the street, adjoining property of Joseph Heickerbrige, and six feet in depth from the street, adjoining the property of N. Kesler.

A certain piece or portion of ground situate in Mechanickham, parish of Jefferson, forming part of lot No. 7 in square No. 10, as represented on a plan of H. Grant, surveyor, dated February 2, 1842, deposited in the office of the late L. R. Kenny, notary public in the parish of Jefferson, which portion of ground measures one hundred and twenty-five feet front on the railroad or Fourth street, nineteen feet in depth from the line of said street and front on Copernic avenue, and fourteen feet in depth on the line of property belonging to J. Walter.

A certain piece or portion of ground situate in Mechanickham, parish of Jefferson, in square No. 11, bounded by Third, Fourth, Newton, and Lavoisier streets; said piece of ground measuring seventy-five feet front on Fourth street or the railroad of said company, three feet in depth from the line of the street, on the line of the property belonging to T. Kraume, and nothing on the lower line next to Lavoisier street, with the rights, ways, servitudes, privileges, and advantages thereunto belonging.

A certain piece or portion of ground situate in Mechanickham, parish of Jefferson, forming part of lot No. 3 in square No. 11, bounded by Third, Fourth, Lavoisier, and Newton streets, as represented on a plan of H. Grant, surveyor, dated February 2, 1842, deposited in the office of the late L. R. Kenny, notary public for the parish of Jefferson, which portion of ground measures fifty feet front on Fourth street, five feet deep on the line of property of N. Kesler, from the street, and three feet deep from the line of the street on the line of property of C. Hausknecht.

A certain piece or portion of ground situated in Mechanickham, parish of Jefferson, forming part of lot No. 5 in square No. 11, bounded by Third, Fourth, Lavoisier, and Newton streets, as represented on a plan of H. Grant, surveyor, dated February 2, 1842, deposited in the office of the late L. R. Kenny, notary public in said parish of Jefferson, which said portion measures fifty feet front on Fourth street or the railroad, eight feet deep and front on Newton street from the line of the street, and nine feet deep on the line of property of Joseph Gering.

A certain piece or portion of ground situate in Mechanickham, parish of Jefferson, in the square bounded by Copernic avenue, Third, Fourth, and Newton streets, measuring one hundred and twenty-five feet front on Fourth street, fourteen feet deep on the line of property of J. Hoehn, and nine feet deep and front on Newton street, forming part of lot No. 1, as represented on a plan of H. Grant, surveyor, deposited in the office of the late L. R. Kenny, notary public for the parish of Jefferson.

A certain piece or portion of ground situate in Mechanickham, parish of Jefferson, forming part of a lot of ground designated by No. 8 on a plan made by H. Grant, surveyor, dated February 2, 1842, deposited in the office of L. R. Kenny, late notary for the parish of Jefferson, which portion measures fifty feet front on the railroad by twenty-seven feet

deep from the said railroad, with all the rights, ways, privileges, and advantages thereunto belonging.

A certain piece or portion of ground situate in Mechanickham, parish of Jefferson, in square No. 9, bounded by Copernic avenue, Third,
339 Fourth, and Cuvier streets; said portion being taken from a lot designated as No. 7 on a plan of H. Grant, surveyor, dated second February, 1842, deposited in the office of the late L. R. Kenny, notary public for the parish of Jefferson; and the same measures one hundred and twenty-five feet front on Fourth street or the railroad, by a depth of seventeen feet, together with all the rights, ways, servitudes, privileges, and advantages thereunto belonging or in any wise appertaining.

A certain piece or strip of ground, with the rights, ways, and servitudes thereunto belonging, situate in Mechanickham, parish of Jefferson, in square bounded by Fourth and Fifth streets, Copernic avenue and Newton street, forming part of the lot designated by the No. 22, as represented on a plan made by A. De Young on the twenty-third of January, 1851, deposited in the office of Samuel Pursell, late recorder in and for the parish of Jefferson; which piece or strip of ground measures five feet in the rear, adjoining property belonging to the railroad, one hundred and ten in depth on the remainder of lot No. 22, belonging to Zeryea, about ten feet in front and depth on Fourth street, and running to a point up to Copernic avenue.

A certain tract of land situate in the parish of Orleans, on the right bank of the Mississippi River, opposite the city and in front of the faubourg Washington; said tract of land having three hundred and seventy-five feet front on the Mississippi River by twenty-four arpents in depth between parallel lines, being forty-six arpents of superficial measure, bounded above by a street fifty feet wide called the Verret avenue, separating the said tract of land from the lands now or heretofore of the Brooklyn Warehouse Company, and below by a street called Thayer avenue, separating said tract of land from the remainder of the tract of land belonging to said Furcy Verret, together with all the improvements thereon and appurtenances thereof, a bulkhead, two wharves, and all the rights, ways, servitudes, and advantages thereunto belonging. And after having given due legal notice to the said defendants, the New Orleans, Opelousas and Great Western Railroad Company, of the said seizure in the manner pointed out by law, I advertised the said property for sale, according to law, after the expiration of the legal delay from the service of said notice, by advertisements announcing the sale to take place at the entrace to the custom-house, on Old Levee street, between Canal and Custom-house streets, in this city of New Orleans, on the twenty-fifth day of May, 1869, at 12 o'clock m. Said advertisements were inserted and published in three newspapers in the city of New Orleans, to wit, in the Commercial Bulletin, New Orleans Picayune, and New Orleans Republican, from the sixteenth day of April, 1869, to the day of sale, being full thirty days from the date of the first notice given in said newspapers. Said advertisments were inserted in said newspapers on the sixteenth, twentieth, twenty-fourth, and twenty-ninth of April, 1869, and on the fourth, eleventh, eighteenth, and twenty-fifth of May, 1869. And after having further complied with and performed all the additional previous legal requisites, and after the said property had been duly appraised, I did expose the same at sale at public auction, to the highest bidder, according to law, at the said entrance to the custom-house, on Old Levee street, between Canal and Custom-house streets, in this city,

on the said twenty-fifth day of May, 1869, at 12 o'clock m.; when, after making due proclamation of said sale and duly crying the said property and appurtenances, the same were adjudicated to Charles Morgan, of the city of New York, he being the last and highest bidder thereon, for the price and sum of two millions and fifty thousand dollars
340 ($2,050,000), of which said sum, according to the terms and conditions of the sale, ($686,000) six hundred and eighty-six thousand dollars and the costs of suit, to wit, ($15,825) fifteen thousand eight hundred and twenty-five dollars, were paid to me in cash, in United States Treasury notes, and the balance of the purchase price, to wit, ($1,348,175) one million three hundred and forty-eight thousand one hundred and seventy-five dollars, the said purchaser, Charles Morgan, assumes the payment of, in favor of the holders of nineteen hundred and eighty-seven bonds of the New Orleans, Opelousas and Great Western Railroad Company, issued on the first of April, 1859, and payable on the first day of April, 1889, and identified with a certain notarial act passed on the first day of April, 1859, between the said company and Edmond J. Forstall, and by which said assumption the said Charles Morgan is bound, and by the acceptance hereof promises and binds himself to pay to the legal holders of the said bonds, or of any of them, the sum of six hundred and seventy-eight dollars and forty-eight cents ($678.48) on each one of the said bonds, payable on the first day of April, 1889, with interest on the said sum of ($678.48) six hundred and seventy-eight dollars and forty-eight cents at the rate of eight per cent. per annum, from the (25th) twenty-fifth day of May, 1869, payable on the first day of October, 1889, and on the first day of April and of October of each year thereafter, as is stated and set forth in an endorsement upon each one of said bonds, printed in red ink, with the signature of F. J. Herron, late United States marshal, in order to identify said bonds with this sale. And to secure the payment of the said sum of ($678.48) six hundred and seventy-eight 48-100 dollars payable on each of the said bonds, and of the interest to accrue thereon, all of the said property so sold and adjudicated to the said Charles Morgan remains specially mortgaged and hypothecated, according to the terms of the said adjudication, in favor of the holders of the said bonds and each of them until the final and entire payment of the said sum of six hundred and seventy-eight 48-100 dollars, payable as aforesaid, on each of the said bonds and the interest to accrue thereon.

And it appears from duly certified copies from the records in the offices of the recorders of mortgages for the parishes of Orleans, St. Charles and La Fourche, which certificates are annexed to the writ of seizure and sale under the authority of which the above-described property has been sold, that there are none other than the following mortgages recorded against the above-described property, viz: In the parish of Orleans; B. 73, F. 85. The one granted in favor of Edmond J. Forstall, per act before Selim Magner, notary public, dated first April, 1859, to secure two millions dollars, interest and costs, recorded April 8, 1859, and reinscribed in book 87, folio 215.

B. 84, F. 600. The one granted in favor of Samuel Smith or others, per act before same notary, dated first March, 1867, to secure the sum of one million dollars, interest and costs, recorded twenty-fourth of May, 1867.

The general one in favor of Hassam & Anderson, resulting from a judgment rendered by the sixth district court on the twenty-seventh of May, 1864, for the sum of $8,325.46, with interest stipulated in said judgment and costs of suit; recorded B. J. M. No. 11, folio 313.

The general one in favor of H. L. Youngs, resulting from a judgment rendered by the parish court of St. Charles, on the ninth December, 1868, for $500, with interest stipulated in said judgment and costs of suit; recorded B. J. M. No. 13, folio 148.

In the parish of St. Charles: The general one in favor of H.
341 L. Youngs, resulting from a judgment rendered by the parish court of St. Charles on the ninth of December, 1868, for the sum of $500, with interest stipulated in said judgment and costs of suit; recorded B. No. 1, folio 183.

The judicial mortgage which exists by the recording of a judgment rendered by the honorable the fifth district court of New Orleans in the case of Louis Mestier vs. New Orleans and Opelousas Railroad Company and Ambrose Lanfear, in favor of said Louis Mestier and against Ambrose Lanfear, for the sum of $10,000, with legal interest from the third day of March, 1859, till paid and costs of suit; which judgment was rendered on the tenth of December, 1859, and recorded on the 28th February, 1860.

The judicial mortgage which exists by the recording of a judgment rendered by the honorable fifth district court of New Orleans in the suit of Louis Mestier vs. New Orleans, Opelousas and Great Western Railroad Company and Ambrose Lanfear, in favor of Louis Mestier and against Ambrose Lanfear, for the sum of $15,000 and costs of suit, which judgment was rendered on the twenty-eighth of June, 1864, and recorded on the seventh day of September, 1864.

In the parish of La Fourche: A judicial mortgage against said New Orleans, Opelousas and Great Western Railroad Company and in favor of Evariste Lepine, for the sum of $300, with legal interest from the nineteenth day of June, 1867, and costs of suit. Inscribed June 28, 1867.

And the late United States marshal aforesaid has by his official authorization directed the recorders of mortgages in and for the parishes of Orleans, St. Charles and La Fourche to cancel and annul all mortgages bearing on the above-described property subsequent to the plaintiff's first mortgage, which was recorded on the eighth day of April, 1859, and which said first mortgage is, by the authorization of the late United States marshal, diminished to the sum of one million three hundred and forty-eight thousand one hundred and seventy-five dollars ($1,348,175), payable on the first day of April, 1889, with interest thereon from the twenty-fifth day of May, 1869, at the rate of eight per cent. per annum, payable semi-annually on the first day of April and the first day of October of each year to the holders of said nineteen hundred and eighty-seven bonds of the said New Orleans, Opelousas and Great Western Railroad Company.

Now, therefore, I, F. J. Herron, late United States marshal aforesaid, in consideration of the premises, and by virtue of the laws in such cases made and provided, do hereby sell, transfer, assign, convey and set over unto the said Charles Morgan, his heirs, administrators, executors and assigns, the aforesaid property and appurtenances; to have and to hold the said property and appurtenances unto the said Charles Morgan, his heirs, administrators, executors and assigns, to his own and their proper use, benefit and behoof forever.

In testimony of which I grant these presents under my signature as late United States marshal aforesaid, in the city of New Orleans, on this the thirty-first day of July, A. D. (1869) one thousand eight hun-

dred and sixty-nine, and of the Independence of the United States of America the ninety-fourth.

(Signed) F. J. HERRON,
Late U. S. Marshal for the District of Louisiana.

Executed in the presence of—
(Signed) J. R. WEST.
" JOHN FAHY.

342 Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I hereby certify that the foregoing deed of sale was this day recorded in this office in book of sales No. 2, folios 325 to 340 inclusive.

Witness my hand and seal of said court at New Orleans, August 24, 1869.

[SEAL.] (Signed) D. URBAN, *Clerk.*
P'r F. B. VINOT, *Dy Clerk.*

Registered in conveyance office in this city, in B. 97, folios 208, 209, 210, 211, 212, 213 and 214, on Thursday, the sixteenth day of September, 1869, at the hour of 12 o'clock m. and twenty-five minutes.

New Orleans, September 16, 1869.

[SEAL.] (Signed) A. MOREL, *Deputy.*

I, the undersigned deputy recorder of mortgages in and for the parish and city of New Orleans, do hereby certify that the within deed was this day duly recorded in this office, in book 88, folios 50 to 55 inclusive.

New Orleans, September 17, 1869.

[SEAL.] (Signed) C. DARCANTEL, *Deputy.*

Registered in conveyance office in book L, folios 252, 253, 254, 255, 256, 257, 258, 259, on this twenty-second October, 1869.

Jefferson Parish, La., October 22, 1869.

[SEAL.] (Signed) THOMAS McCORMACK,
Recorder.

RECORDER'S OFFICE,
St. Mary's Parish, La.

I, James G. Parkerson, recorder, do hereby certify that so much of the foregoing marshal's deed as embraces description of lands, etc., in the parish of St. Mary aforesaid, and terms, price, adjudication and conditions, has been recorded in book No. 23 of conventional mortgages, page 213, No. 14327, and book Q of conveyances, page 194, No. 11684, of my office on the twenty-ninth day of October, 1869.

In evidence whereof, witness my official seal and signature October 29, 1869.

[SEAL.] (Signed) J. G. PARKERSON,
Recorder.

RECORDER'S OFFICE,
Parish of Terre Bonne.

I do hereby certify that so much of the foregoing marshal's deed as embraces description of land, etc., in the parish of Terre Bonne afore-

said, and terms, price, adjudication and conditions, has been duly recorded in book Y of conveyance, page 344, and book I of mortgages, page 476, this day, according to law.

[SEAL.] (Signed) JNO. J. MUSHAWAY,
Recorder.

HOUMA, LA., *November* 1, 1869.

343 RECORDER'S OFFICE,
Parish of La Fourche.

I certify the foregoing deed to have been duly recorded in this office this day, in both the conveyance and mortgage records of said office.

Witness my hand and seal of office this the fourth day of November, A. D. 1869.

[SEAL.] (Signed) EMILE E. LE BLANC,
Dy Recorder.

I, T. T. Baudoin, recorder of the parish of St. Charles, certify that the within conveyance and mortgage were this eighteenth day of November, eighteen hundred and sixty-nine, inscribed in the conveyance and mortgage books of my office.

[SEAL.] (Signed) T. T. BAUDOIN,
Recorder.

I, N. A. Pintado, recorder of the parish of Assumption, certify that the within conveyance and mortgage were this nineteenth day of November, 1869, inscribed in the conveyance and mortgage book of my office.

[SEAL.] (Signed) N. A. PINTADO,
Recorder.

Exception submitted and continuance of case.—Extract from minutes, January 10, 1871.

N. O., M. AND C. R. R. CO. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

This case, fixed for this day for trial, came on—present, Messrs. J. A. Campbell and J. B. Eustis, for plaintiff; Geo. S. Lacey, city attorney, W. W. King, esq., for City of New Orleans; Lea, Finney & Miller, Miles Taylor and Leovy & Monroe, for Whitney and others—

When, on motion of Lea, Finney & Miller, and on suggesting that the exceptions filed in this case by the Pontchartrain Railroad Company are still pending and undetermined, the court took said exceptions under advisement, and the trial of the case on its merits was proceeded with; when, after hearing pleadings, evidence and counsel, the case was, by order of the court, continued to Monday, January 25, 1871, at 11 o'clock a. m.

Testimony of Capt. Thos. P. Leathers.—Filed January 20, 1871.

N. O., M. AND CHAT. R. R. CO. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

Testimony taken in the clerk's office, eighth district court for the

parish of Orleans, at 6½ o'clock p. m.; present, Geo. S. Lacy, city attorney.

After waiting a proper length of time, and the other attorneys having failed to appear, the testimony was proceeded with.

Capt. T. P. LEATHERS, being duly sworn, deposes and says:

I am engaged in the steamboat business, commanding steamer Natchez. I have been engaged in the business about thirty-five
344 years. During the last thirty years have been making weekly landings at the port of New Orleans, discharging cargoes of cotton principally. I am very familiar with the river business which is now being done, and which has been done for many years past, on the levee of this city. From the wood-work or wharves, back to the houses that line the levee, say from Calliope down to Canal street, there is scarcely room enough to do the river business, by which I mean the business of receiving and shipping freight by the river Mississippi.

I am very familiar with the levee from Canal down to Jackson square, which is between St. Peter and St. Ann streets. There is not more than enough of levee between Canal street and Jackson square and the houses that front the river and the river itself to do the business which is now carried on by steamboats and sea-going vessels.

I am familiar with the tracks of the Chattanooga Railroad, as now laid, say from Calliope street down to Jackson square. The effect of the Chattanooga Railroad, with its passenger, freight trains, and many tracks, is to leave the ships and the steamboats without one-third room enough to do their business. The passing to and fro of these trains and carrying on the business of the road would, in my opinion, have the effect of giving to the road almost, if not entirely, the exclusive use of the batture or levee. There is constantly through the day, and all hours of the day, a large number of horses and mules engaged in transporting the river freight to and from the levee to the steamboats and ships and sea-going vessels, and I think the passing of the locomotive up and down the levee would seriously interfere with the teams and drivers; there are frequently instances of those animals being frightened and running away and endangering their lives, as also the lives of others. I have seen the cars stopped at the front of my boat several times, entirely blockading my gangway, and stopping my hands from putting out freight during that time; the road has left no room scarcely between the track and the boats. I am not the only one that have been subjected to this kind of inconvenience; there has been several boats, and many of them. As the business of the road increases the number of trains will necessarily increase, and the river business will be subjected to a corresponding increase of inconvenience, and amounting to almost an entire deprivation of the use of the levee.

The river business is now almost entirely blocked up from Jackson square to Custom-house street, and from there nearly ruined by the railroad up as far as St. Joseph street, where the Chattanooga road comes to the river and occupies the river front. To my knowledge the business of the river at the levee has been so obstructed by the use of the batture on the part of the Chattanooga Railroad, that cargoes of cotton at Vicksburg, intended for New Orleans, have been shipped to Savannah, on account of the use of the batture by the Chattanooga Railroad Company; that company has so cramped up things that steamboatmen cannot find room to do their business—many cotton-

owners, on that account, have sent their cotton to other ports, which otherwise would have come to New Orleans. In my opinion one-half the sugar crop will go up the river and not land in New Orleans on that account. The use of the batture by the road, as laid down, is tantamount to a monopoly of the batture. I have for the last thirty-five years known the batture, over which the Chattanooga Railroad now runs, to have been a public place, and used and enjoyed by the public as such.

345 I expect to go off to-morrow evening on my boat, and may not be in the city on the trial of this cause.

(Signed) T. P. LEATHERS.

Sworn and subscribed before me this 2nd January, 1871.

(Signed) ROBERT LYNNE,
Deputy Clerk.

TESTIMONY—FILED JANUARY 25, 1871.

Eighth district court.

N. O., M. AND CHAT. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19. Testimony. January 25, 1871.

Testimony of W. H. Bell.

W. H. BELL sworn for the city of New Orleans:

Question. You are city surveyor?

Answer. Yes.

Question. Please look at the tracing marked A H, and say whether or not that tracing was made at your office—the city surveyor's office.

Answer. It was.

Question. From what original map was that made?

Answer. From the original map filed with the mayor of the city of New Orleans by the company; the dates of which filing is on the original map.

Question. By what company was it filed?

Answer. By the New Orleans, Mobile and Chattanooga Railroad Company.

Question. These figures on the map, at the heads of different streets, what do they indicate—do not the inside figures indicate the distance from the line of the houses to the track?

Answer. Yes; to the centre line of the track.

Question. I see arrow-marks at each end of different lines; do not the figures between the arrow-marks indicate the distances from one arrow-mark to the other, throughout the map?

Answer. Yes, sir.

Question. The object, then, of these arrow-marks, or angles, is to show where a line begins and where it ends?

Answer. To limit the distances.

Question. And the figures on the map indicate the distances between these arrow-marks?

Answer. Yes.

Question. Look at this other map, marked A I, and state whether or not that tracing was made in the city surveyor's office; and, if so, from what it was made.

Answer. This was made from an original map in the surveyor's office, and that original map was prepared there in the surveyor's office.

Question. By whom was that original map made?

Answer. In the surveyor's office, under my directions.

Question. What do the blue lines running through Elysian Fields and Claiborne streets indicate?

Answer. The lines of the railroad.

346 Question. What railroad?

Answer. The Pontchartrain and the Chattanooga Railroads, through Elysian Fields.

Question. The blue line in the centre indicates what?

Answer. In the centre of Claiborne street it is the Chattanooga Railroad.

Question. And in the centre of Elysian Fields, does it not indicate the Chattanooga Railroad?

Answer. Yes.

Question. I see along Elysian Fields street, opposite the cross-streets, certain figures; what do these figures indicate?

Answer. The distance of the track from the property line.

Question. Please look at the map marked A G; that map shows certain buildings erected, fences made, brick piers in course of construction, etc. Was a survey made of that portion of the levee for the purpose of ascertaining whether or not those buildings, fences, etc., were erected, and whether the fences were or not on the batture?

Answer. Yes.

Question. And the facts in relation to the buildings, fences and improvements, etc., stated on the map are correct?

Answer. Yes.

Question. They are correct as these buildings, fences, etc., stood?

Answer. Yes, as they stood at the day of the survey.

Question. There is a difference now relative to the width of the batture—say from St. Joseph street three or four squares?

Answer. The increased width of the batture commences from Girod street to Canal street—that is, the increased width of the solid batture.

Question. Does this plat, marked B C, show the present condition of the batture?

Answer. This is the one you received yesterday.

Question. This, then, represents the present condition of the road?

Answer. Yes, from the bulkheads to the wharf, as they are at present.

Question. And the figures on the map show the correct distances?

Answer. Yes.

Question. And as they were at the time the measurement was made?

Answer. Yes, and that was only three days ago.

(The city offers in evidence this map, marked B C, now filed.)

Question. The memorandum or statements on the map marked A G are correct, are they, below the river line?

Answer. Yes.

Question. I see on certain squares of ground located on the map marked A G you have placed certain figures—34,000, 38,000, 38,700, 38,500, 50,700—what do these figures indicate?

Answer. I was requested to make a valuation and place it on the map.

Question. They indicate, then, the valuations which you put on at the request of some city official?

Answer. Yes.

Question. Were you not told by me to ascertain the value of the property, and indicate it on this map.

Answer. If I remember right, the instructions came from your department (city attorney's).

Question. Are you pretty familiar with the value of property on the batture?

Answer. The basis on which I made this valuation was the price that the Pontchartrain Railroad Company paid—$130,000—for the
347 two squares located at the head of Lafayette street, from Girod to Poydras. I took the area of these two squares, and then took the area of those claimed by the Chattanooga Railroad Company, and made the same pro rata valuation.

Question. And this method of determining the valuation gave you the figures which you placed on the respective squares?

Answer. Yes. Taken in the aggregate, it would be more, but one square between Notre Dame and Girod is not filled up, therefore I made a corresponding reduction in its value. The property between Canal and Poydras, and between Delta and Water streets, would be much more valuable than the Pontchartrain Railroad property, and lying between Delta, Water, Girod and Poydras; but I have fixed the same valuation of both.

Question. As far as your knowledge extends, do you consider that a just and reasonable estimate of property in that vicinity?

Answer. Yes; I think the city could realize that in cash to-morrow for this property.

Question. Do you know the route of the Chattanooga Railroad on the levee?

Answer. Yes, sir.

Question. Does or not the route of the Chattanooga Railroad lie between the Pontchartrain Railroad track and the river?

Answer. The Chattanooga Railroad lies between the Pontchartrain Railroad and the river.

Question. Do you know or not whether the Pontchartrain Railroad runs close to the property all throughout?

Answer. It runs nearer the property front than the Chattanooga route; it is what we term the inside track, at the office.

Cross-examined:

Question. When did the Pontchartrain Railroad Company buy those squares that you speak of?

Answer. The comptroller's report shows that it was purchased February 8, 1868.

Question. Do you know whether they were paid for, and in what currency?

Answer. I cannot say, positively.

Question. Were they not paid for in city notes?

Answer. I cannot answer that question; I do not know.

Question. Has property appreciated or depreciated since 1868 all over the city of New Orleans?

Answer. That depends a good deal on who wants to buy and who wants to sell.

Question. Is there not a general depreciation of from twenty to twenty-five or thirty per cent. in the value of property since 1868?

Answer. I can hardly admit that. It would not be speaking very well for these two railroad companies on the levee.

Question. I do not ask for any argument; I ask about your knowledge.

Answer. I am not prepared to answer questions outside of my profession.

Question. Have you not been city assessor, or employed in the assessment of various properties?

Answer. Frequently I have been called on to make valuations.

Question. Called on by whom?

348 Answer. Different officers of the city.

Question. Is that a part of the surveyor's duties?

Answer. The surveyor has to furnish all information to all departments of the city government to the best of his ability.

Question. That is, in his line?

Answer. Yes.

Question. You say that the original of the map A I was made at the city surveyor's office; was that made from any survey made by the city surveyor?

Answer. That plan was made from maps in the office. We have maps of all the squares in the city; and the location of the Chattanooga Railroad was measured at different points, as indicated on the map. The distances on Claiborne street are not given, because it was supposed to be in the centre of the street, which is 190 feet 10 inches wide.

Testimony of Van Vleck.

VAN VLECK sworn for the city:

Question. Look at the red lines on the maps marked A H 1 and A H 2, and state what is indicated by these red lines.

Answer. The red lines on these maps indicate the original projected centre line of the Chattanooga Railroad, as originally surveyed and mapped, and a copy of the map was filed in the surveyor's office. This map, extending to Toledano street, shows the location, not as it is built at present, but as it was originally projected and designed.

Question. Does not the map A I represent the present location of the Chattanooga Railroad, from Peters street back to Lafayette avenue?

Answer. I cannot answer for all these figures, but the general location is correct.

Question. As far as your knowledge extends, this map, marked B C, shows the present location of the Chattanooga Railroad tracks, from Canal to Calliope streets, and if not, state where it fails to show the proper location of the tracks.

Answer. It fails to show all the tracks, in my opinion. They are substantially located correctly, but there are other tracks, which are not located on that map.

Question. Will you be kind enough to state if there is any map offered in evidence showing the present location of the Chattanooga Railroad from Canal street to Elysian Fields?

Answer. Yes; the map marked A H shows the location of the Chattanooga Railroad there, but only one track has been built; the outer track toward the river has not been built.

Question. What is the distance between the outer side of the inner track and the inner side of the outer track?

Answer. Nine feet; it is fourteen feet from centre to centre, and the tracks are five feet wide.

Question. You are the chief engineer of the Chattanooga Railroad?

Answer. Yes.

Cross-examined:

Question. There are some maps originally filed here—those furnished from your office—are they correct?

Answer. Yes, sir. This map, marked B D, is a correct map, and was made since this case has been on trial, at the request of both parties to the suit.

(This map, marked B D, is now filed in evidence.)

349 By the CITY ATTORNEY. The red lines on document B D indicate the present location of the tracks?

Answer. Yes; the centre lines of the tracks as now laid.

Question. These red lines, four or five, branching off just above Canal street, are they intended to run into that piece of ground between Canal and Poydras streets?

Answer. Yes.

Question. Is that piece designated there for a passenger depot?

Answer. Yes, designated as a passenger depot.

Cross-examined:

Question. Were you present when the Pontchartrain Railroad Company made the purchase of those two squares?

Answer. Yes.

Question. Do you remember the prices of other property sold at the same time?

Answer. I bought at that time, for the Railroad Company, a block of ground between Water, Pilie, St. Joseph and Julia streets; and also, one below St. Joseph street, between Pilie and Front. I bought those two at public sale; the first one I paid $40,000 in city notes for—city currency; the lower block, I am not certain, but I think I paid $22,000 for.

Question. Were those sales made in city currency?

Answer. Yes, sir.

Question. How much was city currency worth below United States Treasury notes at that time?

Answer. If my memory is correct, they were at about sixteen per cent. discount.

Question. Do you remember how much United States currency was below gold in 1868?

Answer. I do not; this was early in 1868.

Question. How much is United States currency worth, as compared with gold now?

Answer. Gold stands at 110 to 112, or somewhere along there.

Question. What do you estimate the square No. 27 A worth at this time in United States Treasury notes?

Answer. It is worth $25,000, about. That is, the square in dispute, between Girod and Notre Dame streets.

Re-examined:

Question. What do you consider the actual value of those two pieces of property which you say you purchased?

Answer. I paid $40,000 for one.

Question. Do you consider it purchased cheap?

Answer. No, sir.

Question. What do you consider the actual value of that square?

Answer. I will say, in reference to this, that I did not buy it at first, but after other parties had bid it off; they sold it to us.

Question. What do you consider the actual value of squares No. 27 A and No. 26 A at the present time?

Answer. I do not know that either of them is worth more now than they were then; but they are worth more to us than to anybody else, from the fact that we have certain privileges.

Question. This property, then, is of great value to the road?

350 Answer. Yes, in connection with our other property.

Question. Are you prepared to say of this property, to which the city surveyor referred, that if it was sold it would not bring the prices indicated on that map?

Answer. I do not know that it would not; I am not prepared to say; I only judge of this from my own purchase.

Question. You cannot say that the property would not bring the prices indicated by him?

Answer. No, I could not.

Question. Did you or your company make any offer for squ're No. 27 A by itself, or in connection with other property?

Answer. Not to my personal knowledge. I have been informed that the president offered to pay double the price for which it was sold to Mr. Morgan. That includes No. 27 A. He offered to pay $108,000 for the same land sold to Mr. Morgan for $54,000.

(The City of New Orleans offers in evidence the testimony of T. P. Leathers, taken in clerk's office, marked B E.)

Testimony of William Ellis.

WM. ELLIS sworn for defendants Whitney and Hutchison:

Question. Do you live in New Orleans?

Answer. Yes.

Question. Inform the court whether or not, at my request, you have counted for the last two or three days the number of trains that were moving to and fro on the Chattanooga Railroad in the vicinity or between Canal and Calliope streets?

Answer. By your request, I counted the number of trains that moved across Girod and Julia streets; I counted them Monday and Tuesday, and one hour this morning between eight and nine o'clock. I counted the locomotives passing with and without cars attached.

Question. Can you state precisely the hours when you saw the locomotives passing?

Answer. Not precisely; I can state, that on Monday I counted from ten o'clock to dark; on Tuesday, from half past nine to half past four, and Wednesday, that is this morning, between a little after eight to five minutes before nine.

Question. Can you inform us how many trains passed during that time—while you were watching and counting?

Answer. During the time I mentioned the switch locomotive "New Orleans," sometimes not attached to cars and at other times with fifteen or twenty cars, passed Julia street forty-three times, Girod street twenty-nine times, Lafayette street forty-seven times. Locomotive No. 8, employed hauling long trains of cars—I believe construction trains—passed Julia street twenty-eight times, Girod street eighteen and Lafayette street eighteen times, sometimes without construction trains and sometimes with them; and other locomotives crossed Julia, Girod and Lafayette streets about five times. That is what I have seen.

Question. Do you know whether or not there were trains running on the track before the hours on which you commenced watching their motions?

Answer. I am pretty sure there were trains.

Question. Is not your business located somewhere in that vicinity?

Answer. It is, sir.

351 Question. Were there or not about daylight trains running continuously from that time on the road?

Answer. I have seen locomotives several times, early in the morning, cross beyond Lafayette street on the levee.

Question. At what hour in the evening do the cars generally cease running?

Answer. I do not know, sir.

Cross-examined:

Question. What is your business?

Answer. A retail merchant.

Question. Where do you live?

Answer. In the *the* third district of the city.

Question. That is very broad; whereabouts in the third district?

Answer. On Moreau street, between Elysian Fields and Marigny.

Question. Where were you posted when you noticed the passage of these locomotives?

Answer. Opposite Julia street.

Question. In your store?

Answer. No.

Question. Where, then?

Answer. On the levee, sir.

Question. What were those trains you saw; how many cars were there?

Answer. I do not know; I can tell you how many times a locomotive crossed the streets mentioned without cars or with them, but I did not keep account of the trains.

Question. Was the locomotive passing up and down by itself?

Answer. Sometimes to switch trains left between Lafayette and Girod streets; to switch them into the depot.

Question. Was that on the levee?

Answer. Yes.

Question. Whereabout on the levee?

Answer. Between Girod and Lafayette streets and between Julia and Girod streets.

Question. Is that the place where the freight-car depot is?

Answer. Their freight depot, I am sure, is between Julia and Girod.

Question. Was it in the immediate vicinity of the freight depot?

Answer. The freight depot is between Julia and Girod.

Question. Then these locomotives passed in the vicinity of the freight depot?

Answer. Yes, sir.

Question. You cannot tell how many trains passed?

Answer. I cannot.

Re-examined:

Question. You spoke of locomotives going to trains that had been stopped on some part of the track; did you see any such trains, and if so, were they long or short trains that were stopped there?

Answer. I saw trains of cars standing on the levee between Lafayette and Girod streets, and they remained there ten or fifteen minutes.

Question. Did you see such trains in any other places?

Answer. I saw a train of freight cars standing on the levee be-

352 tween Julia and Girod streets. But generally, from what I have

seen, there are from four to ten or twelve cars in a train; I saw four on the outside track. This is in the depot I have seen this.

Question. How long did they remain in that position?

Answer. Ten or twelve minutes at a time.

Question. Are there any other places where you have seen trains stop?

Answer. No, sir.

(The testimony is closed on the part of the City of New Orleans.)

In the case relative to the ferry (No. 27), plaintiff offers in evidence a transcript of the records in the circuit court of the United States for the district of Louisiana in the case of Charles Morgan vs. New Orleans, Opelousas and Great Western Railroad Company, No. 5788 of the docket of that court, marked B E, and filed.

Also certificate of the secretary of state, certifying to the filing of the maps, marked B L and filed;

Also all the evidence taken on behalf of the New Orleans, Mobile and Chattanooga Railroad Company, together with the maps and deeds on file in the case of Burdeau, and the depositions on behalf of that company in that case—introduced by consent.

All the acts relative to the New Orleans, Opelousas and Great Western Railroad Company passed by the legislature of the State, their charters and acts relative thereto, and whatever acts were published in relation to this matter.

Also the map known as the Dunbar map, referred to in the acts of the legislature, now filed and marked B G.

Testimony of Van Vleck (recalled.)

VAN VLECK recalled for plaintiff:

Question. State to the court where are principally located the warehouses in this city for the reception of cotton.

Answer. The majority are located above Lafayette street, I believe.

Question. Where are the greater portion; are they not above Calliope street?

Answer. Yes; the greater portion.

Question. When cotton is landed between Calliope and St. Louis streets what becomes of it?

Answer. It is carried to the cotton warehouses and presses.

Question. What occasions the principal obstruction on the levee between Calliope and St. Louis streets?

Answer. Cotton and sugar.

Question. And the carrying of that cotton and sugar to warehouses?

Answer. Yes, sir.

Question. Would not it be more profitable to the owners of cotton to have it landed above Calliope street, and in the immediate vicinity of the warehouses, than to have it landed at Canal street and that vicinity?

Answer. Yes, sir.

Question. Are there any wharves for the landing of steamboats above Calliope street?

Answer. There is one; a new wharf, made there immediately above, commencing a block above Calliope street.

Question. Was that made by the city?

353 Answer. I believe so.

Question. Is it a large and commodious wharf?

Answer. Yes, sir.

Question. Is there plenty of room above Calliope street on the levee for all that comes to it?

Answer. Yes, sir. I do not know that there would be room enough at this wharf as it is now.

Question. Was that wharf built by the city?

Answer. I understood so.

Question. Do the railroads coming into the city bring in cotton?

Answer. Yes, sir.

Question. Does the Jackson Railroad bring in a great deal of cotton?

Answer. Yes.

Question. Where is that cotton loaded?

Answer. Up at their depot. I do not know exactly the names of the streets there.

Question. That depot is not on the levee?

Answer. No; it is not on the levee.

Question. Does the Chattanooga Railroad bring in cotton?

Answer. Yes, sir; they have been bringing in some.

Question. Where is that carried?

Answer. To the freight-house, between Julia and Girod.

Question. Does that house serve as a depot for all the freight brought by that railroad into the city?

Answer. Yes; nearly all.

Question. Does the Chattanooga Railroad bring in many passengers?

Answer. Yes, sir.

Question. Have you any idea of the number coming in daily by that road?

Answer. I have not any close idea; I see two or three cars with passengers coming in.

Question. They land at what place?

Answer. At Canal street.

Cross-examined:

Question. Are there not also cotton presses and warehouses in the lower part of the city?

Answer. Yes, sir; one very large one—the levee press.

Question. Are there not some also in the centre of the city, on Canal street?

Answer. Yes.

Question. And in the vicinity of Common street?

Answer. In the vicinity of Claiborne.

Question. And back of Canal street, towards Common, there used to be one or two.

Answer. There are some on Lafayette street.

Question. If the steamers plying on the Mississippi River brought their cargoes of cotton and landed them at the wharves above Calliope street, could the ships that take 'way cotton also land at the same place?

Answer. I suppose not.

Question. Is it not a fact that cotton, as a general rule, is sent to be compressed, so as to make it in suitable order for shipping?

Answer. I so understand it.

Question. Is it not important for the interests of commerce
354 that ships should lie at the place where they could most conveniently receive cotton?

Answer. Yes.

Question. Where do the ship landings commence?

Answer. Just above this new wharf—above Calliope.

Question. And extending above Jackson street?

Answer. Yes.

Question. Is there not also a ship landing in the lower part of the city?

Answer. Yes.

By the COURT. Do more ships land at the upper or at the lower ship landing?

Answer. More take on cotton at the upper landing than at the lower, I believe.

By COUNSEL. This New Orleans, Mobile and Chattanooga Railroad, is it not contemplated to run the entire route from New Orleans to Chattanooga?

Answer. I do not know; I am a mere servant of the company.

Question. Is it not to your knowledge that they are making a contract for that portion between Mobile and Chattanooga?

Answer. No, sir; I merely surveyed one road there, and a road is being built there. What connection our people have with it I do not know.

Question. It is called the same railroad?

Answer. No; it is called the Alabama Trunk.

Question. With regard to the western route—is not this company building a road from New Orleans to Texas?

Answer. It is building between here and Grand River, about a hundred miles; that is nearly done, and the route is located and the surveys all made from there to Houston, Texas.

Question. Is it not contemplated that the Texas road is to act in unison with the road running east—is there not to be a ferry between the two?

Answer. That is the calculation.

Question. Give us an approximate estimate of the entire cost of the New Orleans, Mobile and Chattanooga Railroad now finished, east and west, up to this date.

Answer. It would be a very loose approximation.

Question. You can come within half a million of dollars?

Answer. Half a million—is that close enough? I suppose the expenditure is not far from six millions of dollars up to the present time.

Question. If completed to Houston, how much would be the expenditure?

Answer. Probably seven or eight millions more. I would have come prepared if I had thought you would require such estimates.

By the COURT. Where is it contemplated to locate the ferry?

Answer. It is not yet decided. The original design was to locate it in Jefferson City somewhere; but we have not been able to get the facilities there yet.

Question. The charter of the Chattanooga Railroad Company grants the right to lay a track on Claiborne street and in rear of the city?

Answer. Yes.

Question. Is it the intention of the company to construct that tract; and if so, for what use is it to be?

Answer. The original calculation in respect to the building of that road was, that it was necessary to have that track in rear of the city in order to relieve the track on the levee—it was to do through business.

355 By the CITY ATTORNEY. Is it contemplated to run the track up the batture up to the ferry?

Answer. That was the original intention.

Question. Is there any change in that respect?
Answer. None that I know of.

The testimony is closed, except for the Pontchartrain Railroad Company.

Certificate B F.—Certificate of secretary of state certifying to the filing of maps.—Filed January 25, 1871.

STATE OF LOUISIANA, OFFICE SECRETARY OF STATE,
New Orleans, January 10, 1871.

I, George E. Bovee, secretary of state, do hereby certify that there is on file in my office a map showing the lines of track within the limits of the city of New Orleans of the New Orleans, Mobile and Chattanooga Railroad Company, in accordance with the provisions of the acts approved August 19, 1868, and February 19, 1869.

Given under my hand and the seal of State, affixed this tenth day of January, 1871, and the Independence of the United States the ninety-fifth.

[SEAL.] (Signed) GEO. E. BOVEE,
Secretary of State.

EXTRACT FROM RECORD IN SUIT OF J. T. BURDEAU VS. CHS. MORGAN ET ALS.—NO. 1982 SEVENTH DISTRICT COURT.—FILED JANUARY 25, 1871.

State of Louisiana, seventh district court for the parish of Orleans.

Testimony of J. D. Burdeau, Ed. Conery and Geo. A. Fosdick.

J. T. BURDEAU, CHAMBER OF COMMERCE, intervenor, *vs.* CHARLES MORGAN ET ALS. } No. 1982.

Seventh district court.

GEORGE A. FOSDICK, sworn for plaintiff, says:

Question. Do you reside in New Orleans?
Answer. Yes, sir.
Question. How long have you resided here?
Answer. About thirty-two or thirty-three years.
Question. What has been your business during that time?
Answer. Shipping and commission.
Question. Are you familiar with that part of the port of New Orleans lying from Canal street up towards Calliope?
Answer. Yes, sir, perfectly so.
Question. Is that an important portion of the port of New Orleans?
356 Answer. For the river interests and commercial interests generally, I consider it the most important in the city.
Question. What would be the effect upon commerce and upon the value of property in that portion of the city if that was no longer allowed to be used as a steamboat landing?
Answer. The effect would be most detrimental; to my views, there would be compelled to be a change of centre of business; as the steam-

boat landing now is situated, as a matter of course, business centres right in Poydras street and the streets adjacent. If you change that steamboat landing, you change the location of those having business with it.

Question. Would not commerce suffer great inconvenience?

Answer. I think so. I think now it is just about the centre of the city; therefore the expense of transporting property either way is about equal in either direction, whether up or down.

Question. Can you give us an estimate, in your opinion, how far it would affect the value of property in that locality—what ratio of depreciation it would suffer?

Answer. My own ideas are, that if you change that steamboat landing the damage would be irreparable; the property would become useless, from the fact that it would eventually necessitate a change of the entire commercial interests.

(Witness shown plan marked "X.")

Question. Do you observe there what streets appear to have been included in the grants? Name them, if you please.

Answer. St. Joseph, Delord, Julia, Notre Dame, Girod, Pilie.

Question. Can these streets be closed up entirely without producing an injury to the property in that portion of the city?

Answer. They could not.

Question. Suppose you close Pilie, Notre Dame, and Girod streets, what would be the effect of closing those?

Answer. I think it would be a very serious detriment to the commercial interests of this city.

Question. How would it operate upon property?

Answer. I think it would injure all the property situated on those streets. In fact, Julia and St. Joseph streets beyond would also be injured.

Question. Is there any ground, in your opinion, that could with propriety—any considerable portion of ground—be taken from the city of New Orleans that is not required in that portion of the city?

Answer. I think that the whole of the steamboat landing and barge landing are necessary for the use of the river trade. In fact, I do not think they have sufficient at the present time.

Question. That space allotted to the steamboats could not be diminished, in your opinion, without serious detriment?

Answer. No, sir.

Question. How many feet front on the river do you think would be essentially necessary for a ferry running in connection with a railroad?

Answer. My own views on that subject are, that all the railroads running from here should have ferry privileges; but at the same time I consider one hundred and fifty or two hundred feet sufficient for ferry privileges. I derive that opinion from the ferry privileges granted in all other large cities in the country; my own impression is that they can construct—and I have just as good authority as Mr. Pilie—that they can construct slips in the Mississippi as well as elsewhere; she can land bow on here just as well as anywhere else. The city of New
357 York has a current up and down all the day long, and a pretty swift one. The city of Philadelphia, the current there is but one way, and they manage there to construct their ferry privileges and occupy a small space.

Question. You are familiar with those ports?

Answer. Yes, sir. They can construct them here in the same manner.

Question. In your opinion they can be constructed in New Orleans just as easily as in New York or Philadelphia?

Answer. Yes, sir; no reason why they can't.

Question. What number of feet are generally allowed in Philadelphia and New York?

Answer. About one hundred and fifty, I should judge; I don't know positively, but from the eye, I say one hundred and fifty at the outside.

Question. You have seen them often?

Answer. Yes, sir; repeatedly.

Question. You are acquainted with Mr. Burdeau?

Answer. Yes, sir.

Question. Do you know what kind of business he is engaged in?

Answer. Agent for the St. Louis line of barges.

Question. Would the closing of that portion of the port for the landing of his barges be injurious to him?

Answer. Yes, sir; it would be a very serious detriment to his business.

Question. Would he not be compelled to remove his own place of business if his landing was removed?

Answer. I think he would. He should necessarily have his counting-house somewhere near where his boats land.

Cross-examined:

Question. What is the business done opposite that upper landing now—that is to be appropriated to Mr. Morgan?

Answer. Foot of Notre Dame street there's partly a barge landing.

Question. Does it affect the steamboat landing?

Answer. No, sir; it does not, in regard to steamers.

Question. Do you know the amount of produce that is landed at the barge landing in the course of a year?

Answer. I do not; but they land their hay there altogether pretty much, and a great deal of other provender.

Question. You don't know the extent of that business?

Answer. No, sir; I do not. It is a very heavy business, though.

Question. Do you know the extent of the business carried on over the railroad between New Orleans and west of the river?

Answer. I consider it a very large business, necessarily.

Question. Do you know the extent of it?

Answer. No, sir; I do not.

Question. You said that the removal of the landing for barges from that place would injure Mr. Burdeau. How would it injure him?

Answer. It would necessitate the change of his landing to some other point. As the port is now pretty well blocked up, it would be necessary to send him a long ways off from the centre of business. They certainly can't remove one interest to make room for another. To give Mr. Burdeau another place it would be necessary to interfere with the rights of some other business. They are all now crowded to such an extent that it would be almost impossible to do so without interfering.

Question. Supposing that the barges didn't land there, there would be a landing provided for them somewhere by the city?

358 Answer. I presume so.

Question. What particular injury would result to Mr. Burdeau if the barges which come down consigned to him would be landed at another point—what particular mischief would it do?

Answer. If that was a locality a long distance off, it, in my opinion,

would be the cost. It would increase the expense of moving to the centre of the city. That would seriously interfere with his freight—make it less. The increase of delivery must necessarily come off the cost of transportation.

Question. The interest of the whole is concerned. Is it more convenient, in your view, to the business people to have the landing near the spot where the business is done? Would it not be greatly to the convenience of the business community that do business with Texas to have the landing in their neighborhood rather than further down near the railroad?

Answer. I consider that so far as the two landings are concerned the one immediately opposite Jackson square, they now are, is just as good a place as the one they have selected now.

Question. Is there space enough there for convenience?

Answer. I consider there is.

Question. You don't know what the business is?

Answer. I don't know the extent of their business. If they take proper management and remove the property as fast as it comes, there is space enough there.

Question. Mr. Burdeau, what would he have to do?

Answer. He would be necessarily compelled to land his barges in the third district or the fourth; I see no other place.

Question. What effect would it produce on him?

Answer. It would necessarily reduce the amount of freight, from the fact that it would cost excessive drayage to put it in the centre of business.

Question. What do you call the centre of business?

Answer. Poydras street, for his business.

Question. Where does the produce generally go that is landed there?

Answer. In all directions. It is sold and scattered all over.

Question. What goes there besides hay?

Answer. Corn, oats, bran, flour. The flour is all landed in the immediate vicinity of that landing—in the vicinity of Poydras street.

Question. Is it consumed in the city or sent away?

Answer. Most of it is sent away, with the exception of the hay.

Question. The freight that is received there, does any of it go to Mobile—flour and such articles?

Answer. Yes, sir.

Question. Is it shipped by——

Answer. By the barge line, and transferred to the railroad generally, I suppose. Sometimes it goes to the basin.

Question. The most of it?

Answer. The most of it goes over by railby the Pontchartrain Railroad to Mobile.

Question. It is put on board where?

Answer. I presume at the depot, at the foot of Girod street.

Question. Does Mr. Burdeau own any property in that neighborhood?

Answer. That is a question I am not prepared to answer. I am not aware of the fact.

Question. The freight goes elsewhere, most of it?

359 Answer. Most of it is sold here in this market and scattered over the country.

Question. Flour and other things?

Answer. A certain portion of it is for shipment; the greatest portion is for sale.

Question. What is the value of a building at the foot of Girod street now, and the streets in that neighborhood?

Answer. New Levee street, and along there?

Question. Yes.

Answer. I suppose a four-story store there is worth from twelve thousand to fifteen thousand dollars.

Question. How much is it worth in this neighborhood—a store of the same sort?

Answer. Down here?

Question. Yes, sir.

Answer. I suppose from ten thousand to twelve thousand dollars—a four-story store.

Question. How is it between this and Custom-house street?

Answer. I think the value of all that property is about the same.

Question. Is there much difference beyond?

Answer. There is a great deal of difference when you get to Poydras street and Tchoupitoulas.

Question. Beyond?

Answer. Beyond Girod street? No, sir; the difference between property, in my opinion, from Girod, Julia, St. Joseph streets, and in this immediate neighborhood is about the same thing.

Question. Beyond Girod street how does property sell up there?

Answer. From Girod street up beyond property is very cheap, for there's no use for much store property to speak of.

Question. Why is it they have no use for it?

Answer. From the fact that the centre of business is down in the immediate vicinity of Poydras street in that particular trade; the Western produce business is near Poydras street and the streets adjacent thereto; property in that neighborhood is too far off; there is no rental to be obtained. I represent considerable property up there, from which I have got very small returns.

Question. Property in the neighborhood of the present steamboat landing, is it higher in price for the same species than if you go up beyond the barge landing?

Answer. Yes, sir.

Question. Considerably?

Answer. Yes, sir.

Question. Very much?

Answer. Yes, sir.

Question. If instead of a barge landing you should have the place of landing produce that is to go and come by railroad, would the business be materially diminished so as to affect the value of property unfavorably?

Answer. No, sir; I don't think it would.

Question. You said that in the city of New York they have ferries arranged in such a way that they have slips; that boats enter those slips?

Answer. Yes, sir.

Question. You said it to be your opinion that it is practicable to construct the same species of slips here?

Answer. Yes, sir.

360 Question. Economically?

Answer. I don't say economically.

Question. State what is the character of the water which flows down the Hudson and which flows down East River; is it clear water?

Answer. Part salt and clear.

Question. Is it not clear entirely?

Answer. Yes, sir; salt water.

Question. Is it water that makes any deposit?

Answer. No, sir; it does not.

Question. The water on the East River side is simply ocean water, is it not?

Answer. Yes, sir.

Question. Running in from Long Island Sound on one side and passing out around Long Island?

Answer. Yes, sir.

Question. On the other side it is the water of the Hudson River. Is it not to your knowledge that there is no deposit made in that river?

Answer. Yes, sir.

Question. Certainly not below the city of Hudson?

Answer. There is no deposit in the lower portion of the river.

Question. What is the character of the water of the Mississippi River?

Answer. It is muddy, and leaves considerable deposit.

Question. Does it make a large deposit?

Answer. Yes, sir.

Question. How long did you state that you resided in this city?

Answer. Thirty-three years.

Question. State whether any batture has been formed in front of the city, running from Canal street up to Girod.

Answer. Yes, sir; it has been constantly forming.

Question. How much progress has that batture made since you have resided in the city?

Answer. I should say about two squares.

Question. Not more than two squares?

Answer. Two or three; perhaps three; I don't think over that. Levee street was the first street when I first came here; New Levee street in 1837.

Question. In your time about three squares in addition have been formed?

Answer. That is what I meant to convey, that the city has grown out in that direction about three squares.

Question. Isn't that process going on constantly?

Answer. Yes, sir.

Question. Have you ever made any observation of the effect of the current in depositing water where piers have been built out into the river?

Answer. I have seen the water deepened repeatedly where piers have been properly constructed—deepened on one side.

Question. That is where it ran through?

Answer. Deepened at one point and filled up at the counter-point. Some years ago I examined this process; they had a towboat at the mouth of the river—went down for that purpose when they were undertaking to fence the Mississippi in. I found that as fast as they had worked at one particular point they deepened the water to a certain extent; but, as a matter of course, it filled up at the opposite point.

Question. Have you ever seen where there were any piles on anything driven in? Does not the batture form more rapidly?

361 Answer. I don't think this batture is changed in any manner in its formation.

Question. It keeps filling up?

Answer. Yes, sir.

Question. By the granting of this ferry privilege, the barge landing only is changed, not the steamboat landing?

Answer. I think not.

Question. You stated that the property in the vicinity of the barge landing will be depreciated by the moving of that landing beyond.

Answer. I said that the property in the immediate vicinity, by the removal of the steamboat landing and the barge landing.

Question. But the steamboat landing is not moved; how will property be affected by the removal of the barge landing?

Answer. I don't consider that it would be damaged at all.

Question. In the immediate neighborhood of the barge landing?

Answer. Yes, sir.

Question. If the barge landing is removed beyond, up in the fourth district, would property near that landing be increased?

Answer. Yes, sir.

Question. Do you not know that the ferry landings in the city of New York form a prominent part of the port; are not the ferry landings in the most important part of the port?

Answer. The ferry landings necessarily are.

Question. On the East River the ferries communicate with the south side, communicate with Hoboken; are they not in the most prominent part of the city of New York?

Answer. They are scattered in all directions; they have ferry landings, for instance, to the Brooklyn side, some four or five.

Question. The ferry landings there are among the steamships and ships?

Answer. Yes, sir.

Question. The ferry landings that are used to connect the city of New York?

Answer. Yes, sir.

Question. They land right in the very heart of the city, do they not?

Answer. Yes, sir.

Question. Do the Morgan line of steamships that do that business occupy a larger space than is proposed to give Morgan?

Answer. What business?

Question. Does this ferry landing occupy more space than was occupied by the business done by Mr. Morgan?

Answer. Not at all; if he would remove his steamship landing he would have ample room for his ferry privilege.

Question. When that road is completed, will the space given to the railroad for that purpose be more than would have been used by the steamships which would do the Texas business if there was no road?

Answer. No, sir, of course not; he is occupying that much levee there with his steamships.

Question. Hasn't property in that vicinity, for three or four squares, fast improved by the selection of that part of the city for the ferry?

Answer. I don't see any improvement in it. I represent considerable property; I don't see any improvement.

Question. Hasn't property increased?

Answer. I have not heard of any improvement; I represent a good deal.

362 Question. In those cities you spoke of, are or not the steamboat landings under the *the* control of the council of the cities?

Answer. No, sir.

Question. They are not controlled in New York by the council?

Answer. The piers in New York are private property, leased out.

Question. Leased out by whom?

Answer. Leased out by the owners of the property. New York owns some of them, but a large portion are leased out.

Question. With reference to those owned by the cities of New York, Philadelphia, and Boston, do they not regulate the whole business as to steamboats and steamships landing?

Answer. Every steamship landing has a pier; they hire it.

Question. Wherever they control the wharves, do they not regulate the landings?

Answer. I don't think they control them at all; I am not aware of it, except under a harbor-master appointed by the city government. In New York the whole control is under the harbor-master. In Boston a wharfinger is appointed by the owner of the wharf, and the contractor collects the fees; the city has no control except a police control. We are different from any other city in the country that I am aware of.

Redirect examination:

Question. How is that barge trade; are they floated down?

Answer. No, sir; they are model barges that are towed down by steamboats; we draw a line between barges and flatboats. They are occupying the same place that was occupied by the flatboats.

Question. They are propelled, in fact, by steamboats?

Answer. Yes, sir.

Question. The vessels that tow the barges land there, do they not?

Answer. Yes, sir; alongside of them.

Question. They discharge their freight?

Answer. They carry no freight; they are simply towboats.

Testimony of Ed. Conery.

ED. CONERY, sworn for plaintiff, says:

Question. How long have you resided in New Orleans?

Answer. Thirty-three years.

Question. Are you now engaged in business here?

Answer. Yes, sir.

Question. Are you acquainted with the steamboat business?

Answer. Yes, sir.

Question. What space of levee, in your judgment, would be sufficient for a ferry-boat landing for a ferry?

Answer. That would depend upon circumstances, how long the ferry was—about what length of ferry.

Question. An ordinary ferry-boat, such as would be required?

Answer. Ordinary ferry-boats are from one hundred and thirty to one hundred and sixty feet long.

Question (by counsel for defendant). You mean those for the business of passengers?

Answer. Passengers, freight, wagons, etc. What they lack in length they generally give in beam.

Question. What space would one of that character require?

363 Answer. From one hundred to one hundred and seventy-five to two hundred feet would be ample space.

Question. Do you know Mr. Burdeau, plaintiff in this case?

Answer. I know him by reputation.

Question. Do you know what business he is engaged in?

Answer. Not personally I don't—only by reputation; that he is in connection with the barge line; agent for the barge company.

Question. Do you know where those barges now land?

Answer. I have an idea; I have been up to the landing.

Question. What would be the result, it any, to the interest of Burdeau if the landing was removed from that place for the purpose of giving the central portion to any one else for another purpose?

Answer. To his personal injury? I could not say.

Question. What would be the injury to the party who was engaged in the business of bringing Western produce down in barges?

Answer. If they would be removed from their present location?

Answer. Yes, sir; to a distance either above or below.

Answer. It would naturally entail a heavier percentage of freight coinage. For instance, I frequently receive goods by barges; I would have to pay much heavier drayage from Washington street to my place of business near a market; would, possibly, have to pay double drayage on my produce.

Question. Suppose the wharves of the levee from Canal street to Notre Dame street were taken possession of for any other purpose than for that for which it is now used, what would be the effect upon the commerce of New Orleans; would it be an injury or not?

Answer. Well, I think it would. By removing that landing it would, I think, have an effect upon property in that immediate neighborhood.

Question. Would the effect on the property be to depreciate it?

Answer. I should think it would.

Cross-examination:

Question. Do I understand you to say that you have ever been engaged in the steamboat trade?

Answer. Some little.

Question. By that do you mean that you were interested in steamboats yourself?

Answer. Not at present, I am not; I have been interested in steamboats; I am now doing a steamboat business.

Question. Have you ever been the owner of a ferry or interested in a ferry-boat?

Answer. No, sir.

Question. Never done any business in connection with the ferry business?

Answer. No, sir; not directly.

Question. Do you know what length of boat would be necessary to convey from the city of New Orleans to Algiers ten railroad cars at a time, with the passengers?

Answer. I don't know exactly; it would depend entirely upon circumstances—the construction of the boat. You may build a boat three hundred feet long; she could be to two hundred feet and give her width; she might put three cars abreast—one hundred feet.

Question. The question I ask is, where ten cars are shipped all in a line—in one line—in the boat, the track being in the boat, the
364 cars are run from the track on the wharf to the track on the ferry-boat; can you form an idea, in order to do that economically and in a practicable manner, about the length that would be necessary for a ferry?

Answer. I can't say.

Question. Couldn't be done with a ferry of less than three hundred feet?

Answer. I can't say; we might have a boat, and then have to load

head on; you can't load the boat abreast of the wharf; you must load her head on.

Question. Isn't it possible to have a turn-table on the boat?

Answer. If you could move the boilers further aft and have her wide enough it might be easily done, but I doubt very much whether you could have a turn-table. You might have on the bow of the boat, or the forecastle, if you build the boat with plenty of beam.

Question. What would be the length of a ferry-boat on which ten cars would be placed in a line?

Answer. I am not so familiar with the length of a car; they may be thirty feet and may be forty.

Question. Do they not average from thirty to forty?

Answer. I should judge, from the general appearance of a car, from thirty to forty; that is, an ordinary train that I see pass my store every day.

Question. You have stated property would be depreciated by the removal of the barge landing?

Answer. That's my impression.

Question. Isn't it possible that the depot of this railroad being placed there it would increase the value of the property there as much as it would be depreciated by the removal of the barges?

Answer. I can't say much in that line.

Question. You still think that it would not be as valuable?

Answer. My impression is it would very much reduce it.

Question. If the barge landing is removed up to the fourth district, wouldn't that property be increased in value?

Answer. It might in the immediate vicinity have that effect.

Question. You said that one of the objections to the removal would be that the cost of transportation would be increased?

Answer. Yes, sir.

Question. But if the barge landing remained where it is and remove the ferry landing to the fourth district, wouldn't the drayage of merchandise to the ferry be increased?

Answer. Naturally so.

Question. Don't you think, as an old business man in this city, that the commerce of the city of New Orleans will be improved by facilitating this railroad?

Answer. I do.

Question. Do you think the completion of the Berwick's Bay road will add to the commerce of New Orleans?

Answer. I do; I am very much in favor of all railroads.

Question. What is the value of property opposite the barge landing, with reference to that which is this side; which is most valuable, lots this side of Julia street or lots beyond?

Answer. I think lots near Canal—from Poydras to Canal—are most valuable.

Question. Have you not discovered an improvement in the
365 value of property in the vicinity of Notre Dame street, particularly as near as four or five squares back, since the establishments of the depots there?

Answer. I have not, really.

Question. On Peters street and Fulton street—has there not been a perceptible improvement beyond Peters street?

Answer. I have not noticed particularly the last few years the value of property.

Question. Take the building of Margaret?

Answer. It is on New Levee street.

Question. Moore's grocery store?

Answer. Yes, sir.

Question. All that property has improved very much in the last two years.

Answer. I can't say; there has been property sold in that neighborhood very low, a square above.

Question. Is it lower than it was three or four years ago?

Answer. I think it is.

Redirect examination:

Question. You said that you are in favor of railroads, but don't you think it might be better for the commerce of New Orleans that the ferry should be in some other portion than in so important a commercial point as it is?

Answer. I do. I think it might be located so that it would be more beneficial to the city, and still be as convenient, than to crowd the landing there. We have not room as it is; we have thousands of dollars that is of no use that is invested in cotton-boats, for want of room. Next year I don't see where we can land our produce.

Recross-examination:

Question. You say that in an increase of cotton you don't know what will be done?

Answer. We don't know where we will find room to discharge our cargoes.

Question. The question of the barge landing—you would want to move that up in order to give place for the cotton trade?

Answer. I don't propose to regulate those matters myself. I can't, of course, give my opinion as to what ought to be done; all I can say is, that the way it has been this year with our small crop of cotton, from the present prospect, I don't know where we will land it next year. I had occasion once this year before to take a steamboat there, and put our cargo out through the batture right in the mud. It was the only prospect we had to land.

Question. Do you know about the amount of freight that passes over the railroad, going west from this city and from the State, that comes over the railroad to this city?

Answer. I don't know the exact amount; I have an idea.

Question. Is it an important part of the trade of the city?

Answer. It is a very important part of the trade; a very large amount of goods come and go over the road.

366 *Testimony of J. T. Burdeau.*

J. T. BURDEAU, plaintiff, in his own behalf, says:

Question. You are plaintiff in this action?

Answer. Yes, sir.

Question. You are a merchant in New Orleans?

Answer. I am agent of the Mississippi Valley Transportation Company.

Question. I wish you would explain to the court how it would affect your interest individually, and the interest of merchants generally and property-holders in the city of New Orleans, if the steamboat landing, from the vicinity of Canal street up towards Delord street, were taken away from the steamboats as a landing; what effect would that have upon the commerce of the city, mercantile interests and property?

Answer. Upon the produce arriving here it would increase the expense nearly double—the drayage; consequently it would tax property coming here that much more, and probably drive it to some other market where the tax would not be so heavy.

Question. Would it affect your company seriously?

Answer. I think it would be the breaking of our company if they would put us anywhere else; that is, further up the river, because we would be out of the centre of the market; the produce we would bring here could not realize as much as that which would be landed in a central part; you couldn't get anybody to look at it.

Question. Would the change of the steamboat landing necessarily bring about a change also in the commercial centre of business?

Answer. It probably would result in that, but it would take a long time to make it the same business. It would change the business altogether.

Question. Would it involve the necessity of your moving from your present location to the vicinity of where they would land?

Answer. If they would remove the steamboat landing?

Question. If they would remove your present landing, would it necessitate your making a change in your place of business; wouldn't you have to go up and follow?

Answer. It would be better were we there. It is far more convenient and less expense in landing.

Question. Your office, wouldn't you have to move it?

Answer. Yes, sir.

Question. Wouldn't a great many other people have to make a similar move?

Answer. Of course, they would be too far away from business—away from the centre.

Question. Look at the document marked "X."

Answer. Our present landing is between St. Joseph and Notre Dame; that is, the landing which we partly occupy. We are produce and freight boats. Steamboats land below, from Notre Dame to Canal street.

Question. If the space marked in pale red on the map be taken from you, will it interfere with your privileges of landing?

Answer. Then there would not be landing enough for us and the steamboats. Either us or the steamboats would have to be removed.

Question. You mean the steamships, don't you?

Answer. No, sir; the steamships are above St. Joseph street. I mean this: that the barge landing is between Julia and Notre
367 Dame; from Notre Dame down to Canal street is for the steamboats, and above Notre Dame, very near Calliope, is for the Morgan steamships.

Question. If the portion of the plan colored pale red be taken from the general purposes of the port, will it interfere with your business?

Answer. Very materially; we would have to come out entirely and go somewhere else.

Question. Are these streets useful to you—Notre Dame and Girod—in going to and from the river?

Answer. Of course; without them we would have to go past the depot, because they are hardly accessible at present. If they were made accessible, they would be as important as any other.

Question. They are important streets to you?

Answer. Yes, sir; because a good deal of our produce goes into ware-

houses nearly opposite that; into the Delta and several other warehouses.

Question. You have been connected for how long a time with the navigation of vessels?

Answer. About thirty years.

Question. It is proposed to make a ferry for Morgan, to ferry his cars across the Mississippi River in connection with the Opelousas Railroad. I would ask you whether in your opinion it would be possible for the boat or boats that might be constructed for that purpose to be landed head on in slips prepared for that purpose?

Answer. All I can base my judgment upon is what I have seen in other cities.

Question (by counsel for defendant). Name them.

Answer. New York, Philadelphia and Baltimore; all the railroad ferries there that I have seen land head on into a slip; also at Havre de Grace—they have a very large ferry there.

Question. Do you know of any reason why that could not be done in New Orleans as it is done in these cities?

Answer. No, sir; I don't see any good reason why. It was done here, at the foot of Canal street, for over two years.

Question. What difficulty do you think the sediment would interpose, and how could that be avoided?

Answer. I don't know that I could make any calculation; where the river takes its freaks sometimes, the river will flow by a place and make a deposit and then go and wash it right out; but it can be kept dredged out—you can keep building the pier out into the river. When I was a boy the levee was on Tchoupitoulas street.

Question. Suppose slips were made, how often do you suppose, and at what period of the year, would it be necessary to use a dredging-machine in order to keep them open?

Answer. The building of the piers out is calculated to make an eddy inward, and wherever there is an eddy the mud is more likely to settle than where there is a current. It never does that except in high water, when the river is muddy.

Question. What period of the year?

Answer. May, June and July.

Question. How often per week, per day, or per month would they have to use a dredging-machine to keep it open and permit them to run boats into the slips?

Answer. They might build a pier there that might build two or three years and never fill up.

Question. If it did fill up, how much time would it occupy a dredging-machine to dredge it out?

368 Answer. Three or four days in that current. It has been done here before, at Canal street.

Question. How often do you suppose they would have to use it during high water?

Answer. As I told you, it might stay for three or four years and never fill up; it is a freak of nature that we can't account for. It might stay four or five years, then again one high water might fill it up.

Question. Do you mean only four or five days, when it is filled up, would be required to dredge it out?

Answer. Not exceeding that, if they have a dredging-machine. I don't think it would require any dredge for a ferry-boat; for a ferry-boat can be built for a very light draft, not to draw exceeding four feet,

and carry all the cars. If you can, it is seldom you don't find four feet there.

Question. This filling you spoke of would take a whole season of high water?

Answer. Yes, sir.

Question. It wouldn't occur in a week or a day?

Answer. No, sir.

Question. If they had a slip, and discovered that the sediment was settling in it, could they not, by using a dredging machine occasionally for a few hours, or a day, probably clean it out.

Answer. Without the dredging machine, the mere action of the wheel of the ferry would keep the place clean. It has been done at the foot of Canal street.

Question. Even if you had to use dredge boats how much time would it require?

Answer. I don't think it would take over four or five days.

Question. It doesn't all spring up in a few minutes?

Answer. No, sir.

Question. If they began to find it forming, can't they, say in an hour or two any how—say two or three?

Answer. They have the wharf now so far into the current that it is not probable that in front of the wharf it will fill up as much as it did. The eddy is not near as much as it was eight, ten or fifteen years ago. It is the eddy that makes the deposit, while there is a current there can be no deposit, because the current washes it way.

Cross-examined:

Question. Are you a civil engineer, or have you ever made that subject a study?

Answer. No, sir.

Question. Have you ever been captain of a steamship, and made this subject of the river wharves your peculiar study?

Answer. I have been commanding a steamboat between here and Louisville, Cincinnati and Pittsburg for the last thirty years.

Question. Have your ever seen the experiments of slips for large boats tried in New Orleans?

Answer. Just the one I said here—the one at the foot of Canal street. It was there for some time; built expressly for that purpose.

Question. Was not that a small ferry-boat, for the purpose of carrying passengers over the river. Was it any way connected with the railroad?

Answer. To the best of my recollections she was not a large boat, probably one hundred feet.

369 Question. Don't you know that at about the expiration of two years that system was abandoned?

Answer. I know it was abandoned.

Question. Abandoned at the end of two years?

Answer. They used it about a year and a half or two years, on both sides.

Question. You have been in New Orleans how many years?

Answer. Since 1817.

Question. Have you ever known any other attempt made to land ferry-boats in slips besides that one at Canal street?

Answer. Not to my recollection.

Question. Don't you know that that slip at the foot of Canal street was abandoned because it was filled?

Answer. I don't know; I never inquired. I am satisfied that it filled up, and at one time the ferry-boat couldn't quite get to the wharf.

Question. You speak of dredging a slip. Have you ever seen that experiment of dredging a slip on the Mississippi River?

Answer. I have seen dredging out a wharf at that ferry you speak of. I saw it once when a boat couldn't land at all at the foot of Canal street, where there was not five feet of water. I know that, not with a dredge boat, but by a steamboat working her wheel, they made nine feet of water in three days.

Answer. You say that you have seen the slip system tried in New York, Philadelphia, and Baltimore?

Answer. Yes, sir.

Question. Is not the water clear that surrounds those cities?

Answer. Yes, sir; it is.

Question. Is there any sediment like that which is deposited in the Mississippi River?

Answer. No, sir; there is not.

Question. Do you know of there having been filled out in it, and using dredge boats to remove the sediment?

Answer. No, sir; I only passed through those cities.

Question. Is there in those cities anything like the current we had?

Answer. No, sir.

Question. No current?

Answer. No current; dead water.

Question. There is therefore no difficulty with those slips, either as to the sediment or the current?

Answer. No, sir.

Question. You say that sometimes these slips would fill up in two or three years, and sometimes in a high season?

Answer. Yes, sir.

Question. And that would take three or four days to remove the sediment by the dredging system?

Answer. By the dredging system, yes, sir.

Question. Do you think where the dredge system is necessary, and it requires three or four days, that a ferry boat doing the business which this railroad is to do can be successfully carried on?

Answer. I don't think it is possible the way they have got into the river now; it is possible that that place would ever again fill up. There is not, to my recollection, any part of the wharf which fills up the way it formerly did. The crescent has been filled out; the current washed away the sediment.

370 Question. While there is no current, as in this case, with slips, would not the sediment be deposited?

Answer. If the slip was built solid—a slip can be built not solid, so as to let the current flow through the slip; but if the slip was built solid so as to make a perfect eddy.

Question. Could a slip be made for a ferry (300) three hundred feet long in which there would be the current that there is outside the wharf?

Answer. No, sir; the piers would more or less deaden the current.

Question. Don't you know that those wharves are now to be extended forty feet, because of the fact that there is only five or six feet in front of them in low water?

Answer. I have not been advised. It may be a fact; I am not aware of it.

Question. Don't you know, in your memory, that the wharf has filled

from Tchoupitoulas street to its present position, several squares, in consequence of the deposit of sediment?

Answer. Yes, sir; to my recollection I have seen the steamboats land at the foot of Poydras and Tchoupitoulas.

Question. Hasn't the city of New Orleans controlled the subject of landings since you have been in the city; sometimes putting them lower down or up; hasn't there been such changes?

Answer. To my recollection, I don't think the steamboat landing has ever been changed lower down than the blue store on Bienville street, or up as high as Girod street.

Question. But still you know that changes have been made from time to time in landings?

Answer. The steamboats have never been removed.

Question. I speak of all steamboats, barges, steamships; have there not been changes made?

Answer. I never knew of any changes in the steamboats or steamships, only the flatboats.

Question. Haven't the steamship landings been changed?

Answer. Never.

Question. Above or below?

Answer. Never.

Question. Where was the flatboat landing before the war?

Answer. Right about where the Morgan steamships are now.

Question. Where is it now?

Answer. Below.

Question. It has been changed?

Answer. Yes, sir.

Question. Has it not happened that where one party has been inconvenienced by these changes that another party has been benefited?

Answer. I don't exactly understand your question.

Question. Suppose that the steamboat landing was moved up to the fourth district and the ship landing to the foot of Canal street, wouldn't the parties interested in ships get a benefit in the change?

Answer. No, sir.

Question. Wouldn't it be more convenient for them to have their ships in the central portion?

Answer. No, sir.

Question. Why would it not?

Answer. Because their outward cargo would have to be hauled so much further.

Question. Cotton, for instance.

371 Answer. Yes, sir.

Question. Would have to be hauled much further from the foot of Canal street than the fourth district?

Answer. Yes, sir; for we are in the centre; we can haul either way.

Question. (By judge.) Suppose you were to put the flatboats above, where they were before, wouldn't that benefit the flatboats?

Answer. I suppose it would be a privilege to them, because the nearer they are to the centre the best it is.

Question. (By judge.) Suppose they were where they were before.

Answer. It would be an injury to them, because anybody wanting to buy anything wouldn't buy from a flatboat, if they could buy from a steamboat for the same drayage.

Question. (By judge.) In case you brought them near Canal street, you would have to sell for less?

Answer. If you take a flatboat above the Morgan steamships, and

you want to buy a sack of corn, it would cost you about four cents to haul; you can buy the same from the steamboat for three; you would give the steamboat the preference.

Question. The flatboat landing has been put down below?

Answer. They are now below the Morgan steamships—between us and the Morgan steamships—near the foot of St. Joseph street.

Question. These changes are frequently made, and sometimes one party is inconvenienced and sometimes another party is benefitted?

Answer. There has been, as I have said before, to my knowledge, very few changes made in the landing, except it is in flatboats.

Question. Are not parties sometimes benefitted by the change?

Answer. The only party that is benefitted by the removal of the flatboats is the warehouses up town.

Question. (By judge.) Among the vessels, as between one another?

Answer. Of course, if they were to move the flatboat landing the steamboats would benefit, because they would have more room to do business.

Question. If the Opelousas Railroad line have this position, and the barges removed, are they not benefitted, and the owners of the barges prejudiced? Would it not be for the convenience of the public to have the landing at the foot of St. Joseph street, where it is now?

Answer. For steamships?

Question. Yes; and for this landing of the ferry of the Opelousas Railroad, and send them up to the fourth district?

Answer. Send what up to the fourth district?

Question. The ferry landing; you want to reduce the wharf for this ferry landing. Now, if the ferry landing is removed to the fourth district, will not persons in trade with Texas and the local trade be inconvenienced if that wharf was up some distance?

Answer. Of course they would, if they were sent up there.

Question. (By judge.) And will not those who take their place be benefitted?

Answer. Yes, sir; of course; those who take their place would be benefitted.

Question. You would be prejudiced by the removal, but the other party would be benefitted?

Answer. Yes, sir.

Question. Do I understand you to state that the establishment of a ferry landing at the foot of Girod street for the Texas trade will affect prejudicially the commerce of New Orleans?

372 Answer. The removal from there.

Question. Putting it there?

Answer. I think it would; for this reason, that the trade of Texas, comparatively to the West, is nominal.

Question. You speak of this being nominal; now, suppose that road was built, will the commerce of New Orleans be injured by having that wharf at the foot of Girod street?

Answer. That is to suppose that the State of Louisiana can realize as much benefit and profit from one State as she can from seven or eight.

Question. How much of that Western trade is done there?

Answer. With our barges I think we bring here ourselves, independent of the steamboats, over one-half of the Western produce that is landed here.

Question. How many barrels a week at that wharf is the average?

Answer. We land there every week at least eight thousand tons of freight ourselves, independent of the steamboats.

Question. At that wharf?

Answer. Where we now occupy?

Question. Yes.

Answer. With others in the same branch of business.

Question. Average the year round?

Answer. Yes, sir; I have not got the statistics here. We land here ourselves, just one line, in one article, over a hundred thousand barrels of flour a week; have done it the last three months.

Question. I speak of the year round.

Answer. I haven't got it; I couldn't tell you.

Question. Isn't there a large portion of the year that you do very little business?

Answer. No, sir; we do business eleven months in the year; the fact is, twelve months. When we are interfered with by ice, we don't go further than Cairo, and do a greater business than any other time from Cairo.

Question. Take the last three months for instance; have you landed an average of a hundred thousand barrels of flour a week?

Answer. Very near so, in flour only, and that ain't one-fourth of what we bring; our last tow had fourteen thousand barrels.

Question. You stated you landed eight thousand tons. Have you made the calculation how many barrels that is?

Answer. We land at least that a week; we will average that ten months in the year.

Question. How many barrels is that?

Answer. We bring that one article, flour alone, besides others.

Question. You said you landed eight thousand tons of flour?

Answer. No, sir; freight, not flour. I speak positive when I say we bring that much flour.

Question. How many barrels are there in a ton?

Answer. Ten barrels would be a little more than a ton.

Question. That is eighty thousand barrels, all your freight?

Answer. In that one article only.

Question. You said of all your freight there were eight thousand tons?

Answer. A week, about what we land here, of all the freight eight thousand tons; sometimes we bring more, but I think we will average that the year round, eight thousand tons a week.

Question. What is the particular objection to the removal of the landing a short distance above, to which you attribute the change in the commerce of the city?

373 Answer. They have never designated any place particular, except Washington avenue.

Question. Whom do you speak of?

Answer. I have heard it spoken of in the city, that that was the place intended for us.

Question. That was street talk; you know of no resolution having been introduced?

Answer. No, sir.

Question. Are there not places nearer than Washington avenue that could be fitted up?

Answer. Yes, sir.

Question. What was the nearest?

Answer. I don't know of any place, unless they put us above the Morgan steamships.

Question. How far would that be?

Answer. Four or five blocks above.

Question. Do you think that the removal of that landing four or five blocks above would affect the business of New Orleans very prejudicially?

Answer. Yes, sir.

Question. What is the difference?

Answer. You couldn't hardly make any person go there to buy produce, and if you can't get them to buy produce, of course the carrier can't get anything for carrying it.

Question. Do I understand you to say that you couldn't get any person to go four or five squares?

Answer. Yes, sir; you do. During the war, for a time, I was employed with a company; they got the privilege of getting a wharf of their own, opposite Bienville street. It was with the greatest difficulty that we could get Western freight landed there. They wanted Western freight to be landed where it had been formerly and usually landed, between Canal and Girod streets; finally it was changed, and we had to abandon it altogether. We were there for fifteen months; this place between Canal and Girod has been the mart for Western produce for thirty years and more.

Question. Didn't Hutchison propose an arrangement to give you a landing between the steamships' landing and this railroad landing?

Answer. He did; but I didn't know that he had any authority so to do.

Question. That was the promise as to this business to be arranged with the city, that their steamship landing should be changed so as to allow you landing in the immediate vicinity?

Answer. I told Hutchison that I had nothing to do with their railroad freight; that all we wanted was the wharf privilege; if that was given we had nothing to say.

Question. Isn't that arrangement possible to be made?

Answer. I am not so versed in law as to whether Hutchison or Morgan can grant that privilege.

Question. Isn't it feasible and possible, in the nature of things, to have your landing between the railroad landing and the steamship landing?

Answer. If the city will guarantee that that landing will be reserved, not for ourselves, but for all in our branch of business, we would be satisfied; we don't want it for our exclusive right.

Question. Was it not proposed by Morgan to remove the steamship landing so as to do that, through Hutchison?

Answer. I don't know that Hutchison ever did; he said to me
374 that we would get along well enough, but I doubted whether we could or not; I thought he wanted to get all he could.

Question. You have said something about the size of the ferries and their depth. Do you know anything at all about the business that is transacted now by Morgan?

Answer. I judge this: At St. Louis we have a ferry boat that does the business of the railroad there at St. Louis from Illinois. It is immense; far greater than ever Morgan's can be; the ferry boat there only occupies its length.

Question. Does it carry eight, ten, or fifteen cars at a time?

Answer. I have counted seventy-five wagon loads of coal; four horse teams.

Question. Does it carry the cars themselves?

Answer. They do not. They are now, since I left the city. They were not when I left the town.

Question. How many boats are engaged in carrying the cars?

Answer. One boat.

Question. How many cars cross it in a day?

Answer. That ferry-boat can carry not less than four, probably six.

Question. How many cars are crossed a day on that boat, do you know?

Answer. No, sir; it went into operation since I left the city. There is different ways for carrying railroad cars on a ferryboat, some of them carry the car thwart ship, some fore and aft. Those that carry them fore and aft run head on; those that carry them thwart ship, land broadside.

Question. What would be the length of a ferry that would carry eighteen cars at a time, double row of cars, nine on each side?

Answer. I couldn't answer that, for I don't know the length of the car; the boat would have to be long enough, according to the number of tracks.

Question. You don't know anything at all about the size of a ferry-boat that is necessary to carry, at one time, eighteen cars?

Answer. I don't believe there is such a ferry-boat in the United States.

Question. You know nothing about that subject?

Answer. No, sir; I never seen a ferryboat with that many cars yet.

Testimony of J. T. Burdeau.

J. T. BURDEAU, CHAMBER OF COMMERCE INTERVENOR, *vs.* CHARLES MORGAN ET ALS. } No. 1982. Seventh district court.

J. T. BURDEAU, cross-examined by counsel for defendant, as per agreement on file:

Says he is the agent of the Mississippi Valley Transportation Company. The company is incorporated in the State of Illinois. He is not a stockholder in the company; has no other business in New Orleans except that as agent of the company. He owns real estate in this city, on St. John street; thinks it is about ten squares from the city; there is a two-story dwelling-house on the property; it is rented; he has no other real estate in this city. His company has forty barges;
375 we never have less than five a week, and sometimes ten per week; there are never less than from four to five in port at a time. He has not as yet made out the account of their business for the year 1870. He can give the statistics for the years 1867, 1868, 1869, up to January, 1870. The paper herewith filed and marked "O O." The following printed slip is that statement:

Some of the freight the barge line has carried.

From January 1, 1867, to January 1, 1870, the barge line has transported leading articles as follows:

	1867.	1868.	1869.	Total.
Flour, bbls	238,855	281,195	484,300	1,004,340
Oats, sacks	189,599	193,017	153,209	536,625
Corn, sacks	713,123	248,390	125,141	1,086,624
Corn in bulk, bush	167,669	364,760	121,500	653,929
Wheat in bulk, bush		107,811	606,589	714,400

By reducing the flour to wheat and the sacks.

Marked "O O."

His salary is about six thousand dollars per year, and does not vary with the business of the company. His property on St. John is worth, he thinks, twelve thousand dollars. He has also some vacant lots in the fourth district, worth, he thinks, about two thousand dollars. His barges, when here, lie at the wharf from Julia to Girod streets; witness has lived here four years. His family stay in St. Louis, where he came from.

(Signed) J. T. BURDEAU.

Jurat waived.

We agree to this testimony according to stipulation on file.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
Defendants' Attorneys.

(Signed) ELMORE & KING, *Attorneys for Plaintiff.*

Testimony of G. A. Fosdick.

J. T. BURDEAU, CHAMBER OF COMMERCE Intervenor, *vs.* CHARLES MORGAN ET ALS. } N. 1982. Seventh district court.

Testimony taken by consent under agreement on file.

Examination by plaintiff's counsel:

GEORGE A. FOSDICK, witness, says:

That not less than three hundred feet width on the levee are necessary to be left open for the purpose of commerce. This space should be left from the edge of the wood-work of the wharves adjoining the levee. He has often seen that space occupied by the cargoes of vessels discharging their freight.

This is particularly the case with the steamboat landing, and between Canal and Calliope streets, and as low down as St. Louis street.

376 Cross-examination by counsel for New Orleans, Mobile and Chattanooga Railroad Company.

Mr. Burdeau is agent of the Mississippi Valley Transportation Company. His office, witness thinks, is near the corner of Poydras and Fulton streets. Witness does not know whether he owns that office. It is the office of the company and his office as agent. He has no other

business that witness knows of. Witness is not positive, but thinks it is a Missouri corporation. He does not know how many barges they have.

They usually land about the foot of Girod street. Witness does not know the number of barges landed there; they bring Western produce. The centre of the Western produce business is about Poydras street—two or three squares above and below.

(Signed) GEO. A. FOSDICK.

Jurat waived.

Continuance.—Extract from the minutes, January 25, 1871.

N. O., M. AND CHAT. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

This case, continued to this day for trial, came on.

Present, Messrs. Campbell, Spofford & Campbell, and J. B. Eustis, esq., for plaintiff; Geo. S. Lacey, city attorney, and W. W. King, esq., for city of New Orleans; Messrs. Leovy & Monroe, Lea, Finney & Miller and Miles Taylor, esq., for Pontchartrain Railroad Company, George Pandely, and others, defendants.

After hearing further testimony and evidence, the case was ordered to be continued to to-morrow, at 11 o'clock a. m.

Testimony of W. H. Bell.—Filed January 26, 1871.

Eighth district court for the parish of Orleans.

N. O., M. AND CHAT. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

In the map marked "B C" by the clerk introduced in evidence by the City of New Orleans, the landing above Notre Dame street is described as "Morgan's wharves"; this is an error. It is the ordinary steamship landing set apart for that purpose by city ordinances. It is popularly known as "Morgan's wharves" because his steamers land there.

(Signed) W. H. BELL,
City Surveyor.

January , 1871.
Filed by consent by Morgan.
(Signed) H. J. LEOVY.
" GEO. S. LACEY,
City Attorney.

377 *Continuance.—Extract from the minutes, January* 26, 1871.

N. O., M. AND CHAT. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

This case, continued to this day for trial, came on. Counsel engaged present.

When, after hearing argument of J. B. Eustis, esq., for New Orleans, Mobile and Chattanooga Railroad Company, and W. W. King, esq., for the City of New Orleans, the case was ordered to be continued to tomorrow at 11 o'clock a. m.

Continuance.—Extract from the minutes, January 27, 1871.

N. O., M. AND C. R. R. Co. vs. CITY OF NEW ORLEANS ET ALS. } No. 19.

This case, continued to this day for argument, came on. Counsel engaged present.

When, after hearing argument of Messrs. Henry J. Leovy and Miles Taylor, this case was ordered to be continued to Monday, February 6, 1871, at 11 o'clock a. m.

Note of evidence.—Filed February 6, 1871.

Eighth district court, parish of Orleans.

N. O., M. AND C. R. R. Co. vs. CITY OF NEW ORLEANS ET ALS. } No. 19.

The Pontchartrain Railroad Company offers in evidence all the evidence introduced by them in the case of the Pontchartrain Railroad Company vs. New Orleans, Mobile and Chattanooga Railroad Company, No. 116 of the docket of this court, being the same transferred from the seventh district court, including the statements of facts and admissions, and also the evidence offered by them in this case on the motion to dissolve the injunction.

Also an act of the legislature passed October 6, 1868, entitled "An act to enlarge the capital and extend the powers of the Pontchartrain Railroad Company."

Also an ordinance of the council granting right of extension from Elysian Fields street to Girod street, adopted.

Also copy of plan Directeur of the Faubourg Marigny, made by A. de Filieuls the 16th March, 1806.

Also survey of route of Pontchartrain Railroad Company from Elysian Fields street to Girod street, to be made by L. A. Pilié and furnished.

Act of sale from Laurent Sigur to Pedro Marigny, of date sixteenth February, 1798, before F. Brontin, notary public.

Act of sale from Gilbert Anthony de St. Maxent to D. Laurence Sigur, of date August 12, 1789, before Raphael Perdomo, notary, and translation.

378 It is admitted that the extension of the track of the Pontchartrain Railroad Company from Elysian Fields street to Girod street was commenced and put in operation in 1868.

Note of evidence.—Filed February 6, 1871.

Eighth district court for the parish of Orleans.

N. O., M. AND CHAT. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

Note of evidence.—February 6, 1871.

Counsel for Pontchartrain Railroad Company files answer, reserving the exception.

Also statement of evidence, together with documents marked A 1, A 2, A 3, and A 4, now filed.

Plaintiff offers in evidence city ordinance No. 318, approved July 26, 1870.

The evidence is closed.

379 *Answer of the Pontchartrain Railroad Company.—Filed February* 6, 1871.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

Eighth district court for the parish of Orleans.

The Pontchartrain Railroad Company, codefendants herein, reserving the benefit of the exceptions herein filed, should answer be necessary, deny all and singular the allegations of the supplemental petition filed on the , 1870, except such as are hereinafter specially admitted.

These codefendants, for further answer, respectfully represent that, by an act of the legislature, passed 20th January, 1830, a copy whereof is hereto annexed for greater certainty, they were incorporated and empowered to construct a railroad from New Orleans to some suitable point on Lake Pontchartrain, not exceeding ninety feet in width, with as many sets of tracks as the corporation might deem necessary, with all the requisite powers to enter upon, use, and excavate any land that might be required for the site of the road, or the erection of warehouses, or other works necessary or useful to said road, or for any other purpose necessary or useful to the construction or repair of said road or its works. The corporation was endowed with perpetual succession, and all the powers and rights incident to private corporations.

That by the said act or charter these codefendants were authorized and empowered to extend their said railroad to any point within the city of New Orleans, with the like rights and privileges, with the consent of the municipal authorities.

That by an ordinance of the city council, passed by the council and approved by the mayor the 15th of March, 1830, these codefendants were authorized, during the whole duration of their charter, which is perpetual, to cause their railroad to run in the street, road, or walking avenue which lines the space of ground reserved by Bernard Marigny, and known by the name of Marigny Canal, at the time when he established the old and new Faubourg Marigny, starting from the head of

said canal and extending to Levee street, the whole to be established under the direction of the city surveyer; which was done, and the route established in pursuance of said ordinance, which two strips of ground thus authorized to be used then belonged to the city of New Orleans as a public place.

That said space of ground embraces two strips of land twelve feet in width, one upon each side of and adjoining a certain strip of land in the central portion of Elysian Fields street, fifty French feet wide, more or less, extending from the river to the elbow of the canal, at about Hope street, which central space of fifty feet, more or less, was acquired by these codefendants for a valuable consideration from Bernard Marigny by authentic act passed before Felix de Armas, notary, on the 23d of February, 1830, annexed as part hereof; and the locality and dimensions of said two strips of land each twelve feet in width, and said strip of fifty feet in width, more or less, purchased as aforesaid by these codefendants from Bernard Marigny, will more
380 fully appear by reference to the plan made by C. A. de Armas, surveyor, of date the 21st September, 1855, hereto annexed and specially referred to for greater certainty.

That upon the faith of said grant, and in accordance with the charter of these codefendants, they, within the time prescribed by their charter, and in less than three years from its date, at great labor and expense, constructed their railroad from Lake Pontchartrain to the city of New Orleans and to Levee and Peter streets, upon the space purchased as aforesaid, and the two adjoining strips of twelve feet in width, the perpetual use of which was granted as aforesaid, with the requisite tracks, curves, frog-plates, and other appliances and fixtures necessary for the use of the engines and cars of the company and the working of their railroad. That, among other works, these codefendants constructed and located on said central space of fifty feet wide, more or less, and the two adjoining spaces of twelve feet wide, several tracks, with the necessary switches, connections, frog-plates—a water tank, a passenger depot, freight depot, platforms, bridges, and all other works, things, and appliances necessary for the convenient and profitable working of a railroad doing a large business in the transportation of freight and passengers.

That their said railroad from Levee street, upon said central space fifty feet wide, more or less, and the two adjoining strips of twelve feet in width to the Lake Pontchartrain was completed and put in operation in the year 1832, and ever since that time has been running with profit to the company and great advantage to the public.

That by an act of the legislature passed October 30, 1868, defendants were authorized to extend their railroad from its former terminus, at the intersection of Levee and Elysian Fields streets, along the levee to Girod street. That in pursuance of the said act, and of an ordinance of the council passed and approved, and in strict conformity therewith, these defendants constructed and put in operation, in connection and extension of their previously established route, a railroad from the intersection of Elysian Fields street and Peters street to Girod street, and at great expense and labor, at the Girod street terminus built a large and valuable depot, on land previously purchased. The route and location of said extension, and locality of said depot, will fully appear by reference to the plan hereto annexed for greater certainty.

That within the year 1868 the said extension of the railroad to Girod

street was constructed and put in operation, and their depot at the Girod street terminus built on ground the private property of these defendants.

That the purchase of property from Marigny by these defendants as aforesaid, the grants of the right of way and use of ground as aforesaid by the State and city, and codefendants' charter are contracts within the meaning of the Constitution of the United States, and cannot be impaired by State legislation, and that all their rights, franchises, and privileges in the premises are inviolable by State authority.

Wherefore these codefendants pray that the injunction herein issued against them be dissolved; that there be judgment in their favor; that plaintiffs' demand be rejected, and for costs of suit and general equitable relief.

(Signed) LEA, FINNEY & MILLER,
Attorneys for Pontchartrain Railroad Company.

381 *Document A* 1.—*Act of sale from Lorenzo Sigur to Pedro Marigny.—Filed February* 6, 1871.

Venta de la habit'n de Dn. Lorenzo Sigur a Dn. Pedro Marigny.

NOTA.—Que por escritura otorgada por ante mi, el escrivana, con fha de este dia, Dn. Lorenzo Sigur otorgo recivir a favor de Dn. Pedro Marigny de la cantidad de diez mil pesos. Na. Orleans, nueve de Novembre de mil setts. novta. y ocho anos. Doy fee.

BRONTIN, *S'no.*

En la ciudad de la Nueva Orleans, a diez y seis del mes de Febrero de mil setts. noventa y ocho anos, ante me, el escrivano, y t'gos infrascriptos, parecieron Dn. Lorenzo Sigur y Dn. Pedro de Marigny, cavallero de la real orden y militar de San Luis, vecinos de esta d'ha ciudad, y dijeron, que haviendo celebrado el dia diez de este corriente, mes y ano, un contrato de la venta de la havitacion de la propriedad del d'ho Sigur, d'ho Marigny a comprado con ciertas condiciones, y plazos interin sepasara la escritura publica correspondiente conforme a d'ro; haviendo encontrado la dificultad de hallarse hipotecada d'ha havitacion a la responsabilidad di ciertas sumas a la sucesion del Senor Coronel Dn. Antonio Gilberto de Sn. Maxent; or cuyo motivo no se puede verificar d'ha escritura; de presente de un acuerdo, y conformidad, otorgan que d'ho papel se copie y registre a la letra en esta escritura para su mayor validacion y firmesa interin que el referido Dn. Lorenzo Sigru, liquide d'has cuentas: El qual contrato a la letra es como signo:

Nous, soussignés, Laurent Sigur et Pierre Marigny, tous deux habitans de cette ville, sommes convenus ce qui suit, prometant, l'un et l'autre, ne déroger en aucun point au dit acte, et prometant le ratifier au greffe, lorsque les hipotèques sur le dit bien seront levés.

1. Le sieur Sigur vend à Monsieur Marigny la terre qu'il a acquisé de Monsieur de St. Maxent, telle qu'elle est démarquée par le dernier plan qui en a été fait, et tel qu'il a droit de vendre, c'est à dire, depuis la ligne de Monsieur Daunoy Tremé, et la fortification de la ville, se reservant le dit sieur vendeur tous les droits sur la portion qui a été retirée par Monsieur de Carondelet, ci-devant gouverneur de cette province, pour établir la fortification, ainsi que le terre située à Gentilly qu'il a vendu à Monsieur Reano, prometant et s'engageant à livrer ce jour au dit sieur Marigny le surplus de l'acquisition en général qu'il a fait du sieur de St. Maxent, y compris les deux nègres nommés Jean

Louis et Michaud, son frère, pour les prix et somme de cinquante mil piastres gourdes.

2. Quinze mille piastres, que l'acquéreur s'oblige à payer à la succession de feu De St. Maxent, à la liquidation des dites affaires, se faisant de ce jour charge de cette somme; cinq mille piastres comptant trois mille piastres provenant du loyer du moulin déjà reçu par le vendeur, et deux mille piastres comptant; dix mille piastres, payable en cinq ans à dater du premier de janvier mil sept cent quatre-vingt-dix-neuf, par termes égaux, ce qui fait en total trente mille piastres; et les vingt mille piastres restants, dans une habitation appartenante à l'acqéureur, et qu'il avait acquisé de la vente de Mr. Louis Boisdoré, située à une liene et demi de cette capitalle *at* en aut d'un côté à Monsieur Delaronde, et l'autre à Monsieur Dereggio, avec tous les édifices, clotures et qu'il y a sur la ditte terre, que le dit vendeur accepte à ses charges de ce jour, ce qui fait le capital des cinquante mille piastres prix de le vente ci-dessus.

3. Monsieur Sigur restera en jouissance du loyer des savannes,
382 petites baraques qui sont sur la dit*te* terre jusqu'au premier du mois de novembre de la présente année, de même que Monsieur Marigny jourra jusqu'à la même époque de la terra qu'il donné en payement à Monsieur Sigur, la maison principalle et ses dépendances, loué à Monseigneur l'Évêque, sera pour compte de Monsieur Marigny le premier d'avril de cette année.

4. Si Monsieur Sigur lors de la liquidation des affaires de la succession du feu de St. Maxent se trouveroit avoir besoin d'argent pour ce qu'il pourrait redevoir à la dit*te* succession, le sieur Marigny s'oblige à lui fournir les sommes qu'il redevroit, en lui payant les intérêts de dix pour cent du jour qu'il aura remis les fonds, et s'oblige le dit sieur Sigur à donner pour sureté des dittes sommes l'habitation qu'il a eu en payement de Monsieur Marigny, ou à défaut il donnera d'autres objets pour sureté équivalents les sommee que le dit Sieur Marigny aurait pu avancer pour Monsieur Sigur.

5. Le sieur Sigur ne pourra être inquieté en aucune manière pour les beaux qu'il a fait à diverses personnes pour le moulin et savanne, par l'acquéreur le laissant le maitre de continuer si bon lui semble.

Les contractans, en présence des témoins soussignés, acceptent les conditions énoncés dans les cinq articles ci-dessus, reconnaissant avoir reçus mutuellement les objets énoncés de part et d'autre, se faisant charge chaqu'un pour son compte des terres et batisses, ainsi que des deux esclaves, qui de ce jour sont au compte et risque de l'acquéreur. Fai double à la Nouvelle Orléans, le dix de fevrier mil sept cent quatre-vingt-dix-huit.

Nous convenons que la présente sera registré au Greffe, pour qu'elle a*ye* sa force, comme si cet oit une vente authentique de part et d'autre.

(Signe) L. SIGUR.
" PE. MARIGNY.

Jahn témoin: PEDESCLAUX TGO GENTILLY DREUX, fils

Y el referido contrato: Yo el escrivano develoi al referido Dn. Pedro Marigny y a el me remito, cuyo contrato celebrado por los otorgantes por la presente que quieren que se tenga por escritura publica como si fuera hecha, y pasada ante escrivano, y que se les obliguen a su complimiento a no haver dolo, ni engano como asi lo declaran a mayor abundamiento: y que luego que se verifique haver satisf'ho las expresadas sumas a que esta afecta d'ha havitacion conforme esta obligado el d'ho Dn. Lorenzo Sigur sepasara la venta formal, con las

clausulas grevenidas por la ley y tambien la venta de la havitacion del d'ho Dn. Pedro Marigny al referido Sigur, que dan a qui por incerta para su cumplim'to anadienda fuersa a fuerza, y contrato a contrato para que ninguno de los otorgantes se pueda poner excepcion, ni dificultad alguna con ningun tiempo; y a lo firmesa y cumplim'to de lo que d'ho es, obligaron sus biens's havidos y por haver, dieron aqui por incerta la clausulo guarentigia y renunciaron las leyes de su favor em la g'ral enforma que lo prohive; yo el escrivano doy fee conosco a las otorgantes que lo firmaron siendo testigos Dn. Gorge Jahan, Gentilly Dreux hijo, y Antonio Fromentin, vecinos de esta referida ciudad presentes.

(Original signed:)

PEDRO MARIGNY.
L. SIGUR.

Ante mi:

FRANCO BRONTIN,
S'no Pub'co.

383 STATE OF LOUISIANA,
City of New Orleans:

I, Andrew Hero, jr., a notary public in and for the parish of Orleans, State of Louisiana, and custodian of notarial records of said parish, duly commissioned and qualified, do certify that the above and foregoing is a true and correct copy of the original act extant in the records of Francisco Brontin, formerly a notary in this city, and whose records are in my custody as custodian aforesaid.

As witness my hand and seal at New Orleans, this seventeenth day of May, A. D. 1870.

[SEAL.] (Signed) ANDREW HERO, JR.,
Custodian of Notarial Records.

Document A 2.—Act of sale from Gilbert Anthony de St. Maxent to Lorenzo Sigur.—Filed February 6, 1871.

Venta con Hipoteca.

Sepase que yo D. Gilberto Antonio de St. Maxent, Coronel Invalido de los Reales Egércitos otorgo que vendo a D. Lorenzo Sigur vecino de esta ciudad una habitacion compuesta de siete Arpares y ocho toezas de frente poco mas ó menos con la profundid lindando por un lado con la puerta titulada de Francia y por el otro con tierras que fueron de la viuda de D. Hipolito Arnelot solre la cual estan construidas una casa de alto y bajo con galeria al rededor. Con dos escaleras de piedra de veinte y ocho pies de largo y diez y seis de ancho enladrillada, techada de teja-mani, un molino de aserrar tablas, un almacen, cocina, varias cabanas de negros y todas los demas edificios que en dicha habitacion se encontraren, la misma que hube y compré de Da. Maria Gobry de Meoleon a los cuatro de Octubre del ano pasado de mil setecientos sententa y seis por ante D. Andres Almonester y Rojas Escribano que ha sido; y se la vendo al antedichos con todas sus entradas y salidas usos, costumbres, derechos y servidumbres, y por libre de Gravamen como lo ha hecho constar por certificacion del Anotador de Hipotecas, en precio de setenta y dos mil pesos, moneda corriente, segurn las convenciones estipuladas entre nos las que pedimos—al presente Escribano las inserte a la letra; é yo dicho Escribano lo egecuto en la manera siguiente: Nos abajo firmados Dn. Gilberto de S. Maxent Coronel de los Reales Egercitos

de S. M. y D. Lorenzo Sigur, Capitan de Milicias convengam lo que sigue a saber: Que yo Maxent vend Sigur mi habitacion tal que ella ha sido adquirida de la difunta Ma. de Monleon lindando de un lado a la ciudad de la Nva Orleans, y del otro a la tierra que al presente es de la viuda Mad. Brasean con todos los edificios que estan encima de la dicha habitacion, circumstancias y dependencias sin reservar cosa alguna; vende igualmente Dn. Gilberto de Maxent al Sr. Sigur todo el Canal del Molino desde su abertura al Misisipy hasta su Salida al Bajoux S. Juan, como asi mismo todas las tierras dependiente de dicha habitacion tanto de el lado de la ciudad de la Nva Orleans, como las del lado de la habitacion de Gentilly; sobre las cuales tierras de Gentilly sera suministrado al comprador lo cantidad de sesenta pies de Rey de Ancho (o diez toezas) sobre la orilla del canal en todo su largura desde el puente de Gentilly hasta la entrada del monte subiendo el dicho canal, y
384 a la entrada del dicho monte sera abierto un angulo (tal que debera dar) diez arpares desde el codo del canal sobre su prolongacion hasta encontrar la linea formada por él sobre dicho angulo (cuyas lineas y angulos seráu arregladas por el agrimensor Real de esta provincia immediatamente que la sason lo permitira) la linea derecha de los sesenta pies de largo tomados sobre las orillas del canal desde el puente de Gentilly, hasta el Bajoux S. Juan será seguida sobre la misma direccion sin atender al angulo que hace el canal a la entrada del monte del lado del Bajoux S. Juan. Se obliga tambien el vendedor de entregar el molino que sirve para el arroz en buen estado despues de haber lo mudado de lugar reservandose el vendedor servirse del dicho molino para pilar el arros de la cosecha procsima con el goce del patio que linda al dicho molino para alavar en el arroz y trillado. Se obliga asimismo D. Gilberto de Max gar al comprador diez y seis manojos de paja de arroz (para forraje) cada uno de dichos manojos debiendo contener de cinco a seis carretadas. Se obliga tambien el vendedor de hacer concluir, y acabar el palomar que esta en el patio del molino de arroz. Se obliga tambien el vendedor de entregar los molinos de sierras en buen estado y prontos para marchar asi mismo quo todos los utensilios correspondientes a dichos molinos, como tambien de mandar hacer a costa del vendedor el cambia de dos Tirineo ó Trayneaux. Con su cubierto de largo proporcionado que puedan asserrar piezas de madera de treinta pies de largo cuya reparacion sera conducida por un obrero a satisfaccion del comprador. Vende tambien D. Gilberto de Maxent al Sobredicho Senor Sigur todas las maderas de molino redondas que se encuentrau dentro del canal del molino, y las que estan sobre las orillas del rio, y en todas los contornas del molino de sierra reservandose solamente el dejar de las sobredichas maderas las que se encontraran necesarias para las reparaciones de los dichos molinos. Se obliga tambien el vendedor de entregar (tambien) las Yndigoterias con todas las maquinas para batir el anil, y sacar el agua, desaguadero, etc., obligandose tener todas las cuidados posibles para que no se ecstravie cosa alguna, como tambien se obliga el vendedor de hacer conservar en buen estado las tierras que son para el anil, cercas, barreras, y puentes sobre los corraies, prometiendo ademas el vendedor no discomponer nada las cabanas de los negros que pertenecen todas al comprador, como asimismo todos los demas edificias que se encuentrau encima de la sobredicha habitacion. La casa principal sera entregada con las tapicerias q. se encuentran pegadas sobre las paredes, como tambien los maderajas de las chimeneas con los Espejos o trunconx, incustrados en los dichos maderajes, reservandose el vendedor generalmente todos y cualesquiera muebles que sean de la dicha casa los cuales seran sacados al tiempo

de la entrega de la dicha casa que sera el primero de Henero del ano de mil setecientos noventa. Esto pendiente verificado que sea el otorgamiento de esta Escritura el Comprador sera libre de tomar posesion a su voluntad de todo lo alto de la casa principal para alojarse en el con su familia, reservandose solamente el vendedor tres cuartos para su alojamiento con la pequena casa que esta en el fondo del patio en la que esta alojado el Sr su hijo: El Comprador tomara posesion desde ahora del almacen grande que esta en el patio para alojar en el sus esclavos; y en fin promete el vendedor conservar todos los edificios que dependan de la dicha habitacion Mediante lo qual yo D. Lorenzo Sigur me obligo a pagar a D. Gilberto Antonio de Maxent, la cantidad de sententa y dos mil pesos moneda corri de cinco libra cadas pesos (asaver) en cinco pagos iguales y consecutivos a comenzar del primero de Henero de mil setecientos noventa y uno hasta el primero de Henero de mil setecientos noventa y
385 cinco, sera libre, sinembargo el Sr. Sigur no hacer suprimir pago que el primero de Enero de mil setecientos noventa y dos, pagando ocho por ciento de ynteres Annualmente, respecto a que el pago final se encontraria diferido al ano, mil setecientos noventa y seis, y ademas el Sr. Sigur, sera tambien libre de no pagar que los tres cuartos de cada pagos bajo la condicion de pagar igualmente (ocho por ciento) por cada ano por los cuatro restantes de cada pago seran pagados con los intereses, el primero de Enero, mil setecientos noventa y siete. Como asi miemo sera libre el Senor Sigur pagar adelantado alguno de los sobredichos pagos ó en parte obligandose el Senor de Maxent rebajarle el diez por ciento por ano, sobre cada adelantamiento como es de necesidad la mas indispensable de procurar agua a los tierras de Gentilly lo que no puede hacer sino por medio del canal del Molino de sierra serreserva el Sr. de Maxent practicar un canal de comunicacion con el del molino en el lugar vorable cuyo corral no podra tener a lo mas que quatro pies de ancho.

Techo y otorgado de buena fee a la habitacion el quatro de Agosto de mil setecientos ochenta y nueve.

DE ST. MAXENT.
L. SIGUR.

Renuncio la prueba, Leyes de la entrega, excepcion de la *non numerata pecunia; doló* y demas del caso, y otorgo formal recibo. Mediante lo qual me aparto del derecho de propiedad, posesion util y senorio y dema acciones Rs. y personales que a dicha habitacion he tenido que cedo, renuncio y traspaso en el comprador, y en qn. su dercho y causa hubrere para que como suya propia la posea y enagene a su voluntad en virtud de esta Escriptura que a su favor otorgo en senal del Real entrega, con que es visto haber adquirido su posecion sin que necesite do otra prueba de le relevo; y me obligo al saneamiento de esta venta en bastante forma de derecho y como mas convenga en favor del comprador con mis bienes y renta presentes y futuros, doy poder a las Justicias de S. M. que de mi causas puedan, y deban conocer para que me apremien a su complimiento, con el rigor de sentencia consentida, y pasada en autoridad de cosa juzgada sobre que renuncio toda las leyes, fueros, derechos y previlegios de mi favor y defensa, con la general enforma que lo prohibe; Y estando presente yo el dicho D. Lorenzo Sigur, acepto a mi favor esta escriptura y por ella recibo compra da dicha habitacion en el precio, y conformidad que me va vendida de que me doy por entregado, renuncio la prueba leyes de la entrega, las de la cosa novista ni recibida, dolo, y demas del caso y otorgo formal recibo:

Y no obstante de que en las condiciones que quedan explanadas no consta que dicha habitacion debe quedar hipotecada hasta su efectivo pago, los otorgantes acordaron en esta acto, que para mas seguridad de la paga de dicha canditad sin que la general derogue la especial ni por el contrario sino que por ambos derechos se ha de poder usar contra los demas bienes de mi, dicho Segur, hipoteco por especial hipoteca y su espresa clausula de non alienando la citada habitacion la cleal prometo no vender ni en manera alguna enagenar hasta tanto haya cumplido con esta obligacion, lo contrario sea nulo, de ningun valor ni effecto; A cuya firmeza obligo mis bienes y rentas presentes y futuro con poderio y sumision a las Justicias de S. M. y clausula Guarentijia que doy por inserta para su cumplimiento; quedando el Sr. Acreedor; inteligenciado por mi dicho Escriba no de hacer anotar la hipoteca referida con testimonio de esta escritura en el termino prescripto en la Bl Pragmatica de Cinco de Febrero del Ano pasado de sesesenta y ocho: En cuyo testimonio es fecha en esta ciudad de la Nueva Orleans en doce de Agosto de mil Setecientos ochenta y nueve anos: Yo el Escribano publico doy fee, conozco al Senor Vendedor y Comprador, que lo firmaron Siendo testegos D. Vicente Aguiar Antonio Rodriguez presentes.

386 NOTA.—Que antes de firmar esta escritura convinieron las partes los iguientes. Que la linea que sirva de limite a lo sesenta pies sobre las orilla del canal hasta el Bajou S. Juan, es el limite que trace la separacion de la tierras que vende dicho Sr. a D. Lorenzo Sigur, con las de Gentilly, que se reserva el Sr. Vendedor: mediante lo cual, todo lo quedo fuera de esta linea, pertenecera al Comprador. Fecha ut Supra.

Testigos los instrumentales—

GILBERTO ANTONIO DE ST. MAXENT,
L. SIGUR.

Ante mi:

RAFAEL PERDAMO,
Escribano Publico.

NOTA.—Que con fecha de este dia dé testimonio de esta escriptura al Sr. D. Gilberto Antonio de St. Maxent para la anotacion de la hipoteca que en ella se contiene.

Nueva Orleans catorce de Agosto de mil setecientos ochento y nueve Anos.

Doy fe.

PERDOMO.

STATE OF LOUISIANA,
Parish of Orleans:

I, Andrew Hero, jr., a notary public, and the custodian of notarial records in and for this parish and city of New Orleans, duly commissioned and qualified, do certify the above and foregoing as being a true and correct copy of the original act extant in the records of R. Perdomo, formerly a notary public in this city, and whose records I hold as custodian thereof.

As witness my hand and seal at New Orleans (as custodian aforesaid) on this 20th day of May, A. D. 1870.

[SEAL.]

ANDREW HERO, JR.,
Custodian of Notarial Records.

Document A 3, translation of A 3.—Act of sale from St. Maxent to D. Laurence Sigur.—Filed February 6, 1871.

Mortgage sale.

Be it known that I, Gilbert Anthony de St. Maxent, a retired colonel of the royal armies, declare that I sell to D. Laurence Sigur, a resident of this city, a plantation of six arpents and eight fathoms front, more or less, on a depth , bounded on one side by the gate known as the Gate of France, and on the other side by lands that were once the property of widow of D. Hippolyto Amelot. On which plantation are constructed a house with a lower and upper story, encompassed by a gallery with two stone staircases, twenty-eight feet in length and sixteen in width, paved with bricks and roofed with shingles, a mill to saw planks, (a saw-mill), a store-house, kitchen, and various negro cabins, and all other buildings which may be found on said plantation. It being the same which I bought and held from Mrs. Mary Gobry de St. Moleon on the fourth day of October of the past year, seventeen hundred and seventy-six, by deed before D. Andres Almonaster y Rojas, a late notary public.

This plantation I sell to the aforesa*f*d, with all its ingresses and egresses, appliances and customs, rights and servitudes, free from all incumbrance, whereof I have made proof by certificate from the register of mortgages, for the price of seventy-two thousand dollars, current money, according to the stipulations agreed upon between ourselves; which stipulations we request the present notary to set down to the letter, and I, the said notary, do comply with such request, in the manner following:

We, the undersigned, D. Gilberto de St. Maxent, a colonel of
387 the royal armies of His Majesty, and D. Laurence Sigur, a captain of the militia, agree (c*o*nvengamos) on the following, to wit:

That I, Maxent, do sell (vendo) Sigur my plantation just as I acquired it from the late Mrs. de Moleon, bounded on one side by the city of New Orleans and on the other side by the tract of land which belongs to Mrs. Widow Brasean, with all the buildings which are thereon, together with its appurtenances and dependencies, without any, whatsoever, reservations.

In like manner D. Gilbert de Maxent sells to Mr. Sigur the whole of the mill canal, from its opening on the Mississippi River to its outlet on Bayou St. John, as well as all the lands belonging to said plantation, as well on the side of the city of New Orleans as those on the side of the Gentilly plantation; from which Gentilly lands the vendee shall be supplied with sixty feet (or ten toises), royal measure, in width, on the bank of the canal in the whole of its length, from the Gentilly bridge up *f*o the entrance to the woods, going up said canal; and at the entrance of said woods there shall be opened such an angle as to allow ten arpents from the bend [el codo, literally the elbow] of the canal along its extension until it meet with the line formed by it with the aforesaid angle; which lines and angles shall be determined by the royal land surveyor of this province, so soon as the state of the weather may allow the same. The straight line of the sixty feet in length taken from the banks of the canal, from the Gentilly bridge up to Bayou St. John, shall be followed up in the same direction, without reference to the angle formed by the canal at its entra*h*ce into the woods on the Bayou St. John's side.

In like manner the vendor obligates himself to deliver the rice-mill in

good condition, after having removed it from its site, he reserving to himself the use of said mill to pound [polish] the rice of the forthcoming crop, together with the fruition of the court-yard contiguous to said mill, for the purpose of cleaning and thrashing the rice.

In like manner D. Gilberto de Max [ent] obligates himself to gar [deliver?] to the vendee sixteen bundles of rice straw (in the way of fodder), each one of which bundles shall duly contain from five to six cart-loads.

The vendor likewise obligates himself to the finishing and completion of the pigeon-house in the yard where the rice-mill is found. The vendor further binds himself to deliver the saw-mills in a good condition and working order, as also all the utensils belonging to said mills, as also to have altered at his, the vendor's, cost two sheds, with their roofing, of length sufficient to allow the sawing of timber thirty feet long, which repairs shall be made by a mechanic satisf'ctory to the vendee.

D. Gilberto de Maxent likewise sells to the forementioned Mr. Sigur all the saw-mill timber that may be found within the mill canal, as well as that which lies on the banks of the river and about all the premises of the saw-mill, said vendor only reserving for himself the exception of such timber as may be found necessary for the repairs of such mills.

The vendor in like manner obligates himself also to deliver the indigo works, with all the machinery to mash the indigo and draw up water, as also for purposes of drainage, etc., hereby binding himself to exercise every care, so that nothing may go astray; and further binding himself, said vendor, to have the lands intended for the cultivation of indigo, the enclosures, fences, and bridges over the canals, kept in good order; the vendor promising, in addition, in nothing to disturb
388 the negro cabins, all of which belong to the vendee, as well as all the other buildings lying and being on the aforesaid plantation.

The main residence shall be delivered, with the tapestries that are fastened to the walls, as also the frames of the mantlepieces, with the mirrors and pier-glasses inserted in said frames, the vendor reserving for himself generally all and whatsoever articles of furniture that may belong to said residence, which will be taken out at the time of giving up the house, which shall take place on the first of January, of the year one thousand seven hundred and ninety. In the meanwhile, and upon the delivery of this instrument of writing, the vendee will be at liberty to take possession at will of all the upper story of the main house for his and his family's occupation, the vendor merely reserving for himself three rooms for his lodgings, together with the small house at the bottom of the yard in which his son is lodged.

The vendee shall forthwith take possession of the large storehouse which is in the yard, in order to lodge his slaves therein; and lastly, the vendor pledges himself to keep himself in good condition all the buildings which belong to said plantation.

In consideration of which I, D. Lorenzo Sigur, obligate myself to pay to D. Gilbert Anthony de Maxent the sum of seventy-two thousand dollars, in current [corri] money, at the rate of five livres to each dollar, to wit, in five equal and consecutive instalments, beginning on the first day of January, one thousand seven hundred and ninety-one, until the first day of January, one thousand seven hundred and ninety-five; Mr. Sigur, this notwithstanding, shall be at liberty not to have payment omitted, except until the first of January, one thousand seven hundred and ninety-two, he paying an annual interest of eight per cent., in view of the final payments being deferred until the year one thousand seven hundred and ninety-six; and further, Mr. Sigur shall be at lib-

erty to pay the three-fourths only of each instalment, under the condition of paying in like manner (eight per cent.) for each year, for the four remnants of each payment, [which] shall be paid, with interest, on the first of January, one thousand seven hundred and ninety-seven. In like manner Mr. Sigur shall be free to pay in advance any one of the said instalments, or in part: Mr. de Maxent binding himself to discount ten per cent. a year for each advance payment.

As the procurement of water for the Gentilly lands is of indispensable necessity, which cannot be done except by means of the saw-mill canal, Mr. de Maxent reserves the right of constructing a canal connecting with the saw-mill canal on the most favorable [vorable] spot, which water-way shall not be more than four feet in width.

Done and acknowledged in good faith, on the plantation, on the fourth of August, one thousand seven hundred and eighty-nine.

(Signed) DE ST. MAXENT.
" L. SIGUR.

I renounce the proof, the laws of delivery, the exception de non numerata pecunia, of fraud, and other provisions relevant to the case, and I hereby acknowledge formal receipt.

In consideration whereof I divest myself of the right of property, of useful possession, control, and all other actions, real and personal, which I have held over said plantation, which I renounce, bargain over and transfer to the vendee and to his assigns and representatives, so that he may, as his own property, hold and alienate it at will, by virtue of this instrument of writing, which I authorize in his favor, in the way and form of actual delivery, by which it is seen that has acquired
389 possession without necessity of any other proof, from which I hereby release him; and I obligate myself to the warranty of this sale, in sufficient form of law, and as may be best conducive, in favor of the vendee in my property and present and future havings. I confer power on the justices of His Majesty, that they may and shall inquire into my actions and compel me to the compliance herewith, with the rigor of confession of judgment, passing into the efficacy of res judicata, whereupon I renounce all laws, rights and privileges in my favor and for my defense, together with the general and formal prohibitive law.

And I, the aforesaid Laurence Sigur, being present, do accept in my behalf this instrument of writing and thereby receive the purchase of said plantation for the price and under the agreement under which it is sold to me, the delivery whereof I acknowledge. I renounce the proof and the laws of delivery, such as those of the thing not seen nor received, of fraud, and others relative to the case, and I hereby give formal receipt.

And now, although in the conditions which have been laid down it is not expressed that said plantation is to remain mortgaged until its effectual payment, the parties contracting have agreed in this act of sale, that for greater security of the payment of said sum without annulment by the general condition of this special one and vice versa, but that by both rights process may be instituted against my other property, the said Laurence Sigur's, I mortgage by special mortgage, with the clause de non alienando, the forementioned plantation, which I promise not to sell nor in any other way alienate until I will have complied with my obligation; while, on the contrary, such sale shall be void and of no value and effect; and to the maintenance of this I pledge my property and my present and future incomes, under author-

ity and submission of the courts of His Majesty, with the warranty clause, which I admit as inserted for the fulfilment hereof. The creditor being duly informed by me, the notary, to procure the registry of this forementioned mortgage, accompanied by exemplification of this instrument of writing within the period prescribed by the royal schedule of the fifth of February of the year sixty-eight, last passed.

In testimony whereof done in this city of New Orleans, on the twelfth of August, one thousand seven hundred and eighty-nine.

I, the notary public, do certify that I know the vendor and vendee, who have subscribed this in the presence of D. Vicente Aguiar and Antonio Rodriguez, witnesses.

NOTE.—That before signing this instrument the parties agreed to the following: That the boundary line of the sixty feet on the banks of the canal up to Bayou St. John, is the limit which marks the separation of the lands which [he] sells to said Mr. Laurence Sigur from the Gentilly lands, which the vendor reserves for himself, by virtue of which all the portion of land which lies outside of said line shall belong to the vendee.

Done as above, in the presence of the assisting witnesses.

(Signed) GILBERT ANTHONY DE ST. MAXENT.
(") L. SIGUR.

Before me.
(Signed) RAPHAEL PERDOMO,
Notary Public.

NOTE.—That under this day's date I gave certificate of this instrument of writing to D. Gilbert Anthony de St. Maxent, for registry of the mortgage which is therein contained.

390 New Orleans, the fourteenth day of August, in the year seventeen hundred and eighty-nine.

Which I certify.
(Signed) PERDOMO.

Document A 4—Ordinance No. 664, new series.—Filed February 6, 1871.

MAYORALTY OF NEW ORLEANS,
City Hall, July 13, 1867.

No. 664, new series.

An ordinance concerning the Pontchartrain Railroad Company and granting to said company additional rights and privileges for the extension, use, and maintenance of its railroads and depots within the limits of the city of New Orleans.

Be it ordained, That the city of New Orleans hereby grants to the Pontchartrain Railroad Company the right and privilege to extend, construct, and maintain, and thereafter to manage and use, by running thereon engines and cars and train of cars, a single-track railroad with the necessary turnouts to and from the depots, from the present terminus of their road at the intersection of Elysian Fields and Peters streets, along the curb-stones bordering the levee to St. Philip street; thence in the centre of Clay street to Toulouse street; thence on the

levee to the intersection of Canal and Delta streets, and thence in the centre of Delta street to Girod street.

Be it further ordained, That in the construction of the said line of railroad and the track and turnouts thereof, the said Pontchartrain Railroad Company shall not in any manner obstruct or impair the drainage of the streets and levee along, upon, or across which the said railroad is hereby located, and that the said company shall, at all times and in all respects, be bound to conform with the lines, levels, and grades to be established by the city surveyor; and whenever the company shall find it necessary to cover the channel of any drain, the sides thereof shall be first protected with brick, stone, or wood in a good and substantial manner and to the entire satisfaction of the city surveyor, and said covered channel shall be kept open and clear for the passage of water by said company.

Be it further ordained, That the said railroad company shall be bound to pave with square block stones the space between the rails of the tracks and three feet in width on each side of said tracks, and to always keep in the best repair and condition the paving, shelling, or macadamizing of the streets, as well as the bridges at the intersections of the streets through which the right of way is hereby granted; and, should the said company, after having been duly notified by the street commissioner, refuse or neglect to keep said streets and bridges in the said good repair and condition, it shall be the duty of the street commissioner to cause said repairs to be made at the expense of said railroad company, and to immediately report the same and the cost thereof to the common council; and in the event of a refusal by the said railroad company to pay the city the amount of the expenses thus incurred for making the said repairs, the said amount shall be recoverable before any court of competent jurisdiction.

Be it further ordained, That the said railroad company shall have the right to construct, and thereafter use and maintain, for the
391 safe and convenient transaction of its business, such depots as it may deem necessary: provided, that said depots be located on property to be first legally acquired by said company; and provided, also, that said depots be constructed in the most substantial and workmanlike manner, with bricks, stone, or iron, and covered with slate or metal, and be designed and completed in such a manner as to make them in every respect first-class depot buildings.

Be it further ordained, That the common council of the city of New Orleans reserves the following rights, to wit:

1. Whenever the extent of the levee in front of the city will be such as not to be any longer required for the use of commerce to dispose and sell any part of the same, divided into squares and lots, and to compel the said railroad company to remove its track therefrom, unless it prefers to acquire the same by purchase in the usual manner.

2. To revoke at any time the right hereby granted to said company to use steam locomotion, and to compel horse or mule-power only to be used.

Be it further ordained, That the said railroad company shall be subject to all rules and regulations already in existence or which may hereafter be enacted by the common council.

Be it further ordained, That the trains on said road shall not move at a greater rate than five miles per hour.

Be it further ordained, That should the said Pontchartrain Railroad Company fail to complete said line of road and depots, etc., within one year from the adoption of this ordinance, or should afterwards fail to

maintain and have a regular communication and means of traffic on said railroad, then the rights and privileges which are hereby granted to said company shall be forfeited and revert to the city of New Orleans.

(Signed) THO'S S. MOORE,
President Board of Assistant Aldermen.

(Signed) GEO. CLARK,
President pro tem. Board of Aldermen.

(Signed) E. HEATH,
Mayor.

Approved July 16, 1867.

A true copy.

(Signed) GEO. T. CHILDS,
Secretary.

Ordinance No. 318—*administration series.—Resolution withdrawing permission, etc.—Filed February* 6, 1871.

No. 318—administration series.

Resolution withdrawing permission granted to Pontchartrain Railroad Company to occupy banquettes on Elysian Fields street.

Resolved, That the permission which the mayor of the city of New Orleans was authorized to confer upon the Pontchartrain Railroad Company to use the street, road, and avenue which lines the space of ground reserved by Mr. B. Marigny, and known under the appellation of the Marigny Canal at the period when he established the old and new suburb, under an ordinance of the city council, approved March 15, 1830, if made by him as authorized, be, and the same is hereby, revoked, and that the said ordinance be, and is hereby, repealed, the public convenience requiring the use of the space described in the said ordinance, and the further appropriation of the said space in the manner specified being inconvenient to the public.

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Adopted July 26, 1870.

Continuance.—Extract from the minutes of February 6, 1871.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

This case, continued to this day for argument, came on. Counsel engaged present.

When, after hearing argument of Miles Taylor, esq., Cha's Morgan, intervenor, it was ordered that this case be continued to-morrow at 11 o'clock a. m.

Continuance.—Extract from the minutes of February 7, 1871.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

This case, continued to this day for argument, came on.

When, after hearing argument of G. S. Lacey, city attorney, it was ordered that this case be continued till to-morrow at 10 o'clock a. m.

Continuance.—Extract from the minutes of February 8, 1871.

N. O., M. AND C. R. R. CO. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

This case, continued to this day for argument, came on.

When, after hearing argument of counsel, it was ordered that this case be continued to Wednesday, February 15, 1871, at 12 o'clock m.

EXTRACT FROM RECORD OF SUIT OF J. T. BURDEAU VS. CHA'S MORGAN ET ALS.—NO. 1982, SEVENTH DISTRICT COURT FOR THE PARISH OF ORLEANS.—FILED FEBRUARY 15, 1871.

State of Louisiana, seventh district court for the parish of Orleans.

J. T. BURDEAU, CHAMBER OF COMMERCE, INTERVENOR, *vs.* CHARLES MORGAN ET ALS. } No. 1982.

Testimony of W'm S. Williams.

W'M S. WILLIAMS, sworn for plaintiff, says:

Question. Are you or not connected with the Chattanooga Railroad?

Answer. I am.

Question. In what capacity?

Answer. As treasurer.

393 (Witness shown map marked X.)

Question. Were you aware of the time the city ordinance was passed, selling to Morgan a portion of the batture in front of New Orleans?

Answer. Yes, sir; last July you have reference to, I believe.

Question. Yes; do you recognize it on the map?

Answer. That is as I should point it out. This diagram, I should think, was correct.

Question. At the time that ordinance was in agitation, did your company make an offer to the city of any price for that property? If so, state it.

Answer. As soon as we knew the price at which they proposed to sell that property, we offered twice the amount for it.

Question. Do you now recollect the figures?

Answer. One hundred and eight thousand dollars we offered for it.

Question. Notwithstanding your offer the sale was made to Mr. Morgan, was it, or was the ordinance passed?

Answer. The ordinance passed.

Cross-examined:

Question. Has your company bought any squares upon that neighborhood?

Answer. Yes, sir.

Question. Which ones?

Answer. I could point it out on the map.

Question. State between what streets?

Answer. We have bought property between Water and Calliope, St. Joseph and the river, as one purchase.

Question. What price did you pay for it?

Answer. I think we paid seventy thousand dollars for it.

Question. What other one?

Answer. We bought between St. Joseph and Julia, Pilie and Water.

Question. At what price?

Answer. I don't remember the price of that. It was at a city sale some two years ago, I think, or three years.

Question. What other one?

Answer. We bought, I think, one-half of the one lying in front of the one just mentioned.

Question. How much for that?

Answer. I don't remember; I should have to refer to the records for that.

Question. What others?

Answer. We have since bought between Julia and Notre Dame, Water and Pilie.

Question. What price did you pay for that?

Answer. We either gave $35,000 with $5,000 added, or it was $30,000 with $5,000 added; it was about $35,000.

Question. That is the square next to the one you refer to as having been offered to be sold to Mr. Morgan?

Answer. Yes, sir.

Question. At the time your company offered one hundred and eight thousand dollars for the square to which we have referred, had not the ordinance already passed both boards, and was not the offer made to the mayor in order to defeat Mr. Morgan.

394 Answer. It was not made to defeat Mr. Morgan. It was made as soon as we knew the price.

Question. Was it made after it had passed both boards?

Answer. I can't say whether one or both; as soon as the price came to our notice of fifty-four thousand dollars we immediately sent a proposition offering one hundred and eight thousand dollars.

Question. It had passed one board?

Answer. I can't say the price had been brought to our notice either by the passage through one board, or by some outsiders.

Question. Was not the offer made to the mayor of the city?

Answer. It was a written, authentic offer. I don't know to whom it was sent; the president was here at the time; I think I joined him as two officers of the company.

Question. Was it after it passed the council?

Answer. Possibly it was, but it was as soon as it was brought to our notice, and we learned the price.

Redirect examination:

Question. When you made that offer did you or not understand at that time that Morgan's purchase was complete?

Answer. No, sir.

Question. Would you have made any offer if you had known he had closed his bargain?

Answer. No, sir; it would have been useless; we didn't suppose it was complete; we knew the fence had not been made; had no reason to suppose that the fence had been made.

Admissions.

Seventh district court.

J. T. BURDEAU, CHAMBER OF COMMERCE INTERVENOR,
vs.
CHARLES MORGAN ET ALS. } No. 1982.

On the trial of this cause as against the New Orleans, Mobile and Chattanooga Railroad Company, to facilitate the trial it is admitted by the parties—

1. That the property above Canal street was originally granted by the King of France to the Order of Jesuits for a plantation; the grant was for thirty-two arpents fronting on the river Mississippi, and running back for about fifty arpents.

The other property above, within the present limits of the city of New Orleans, was in like manner granted to various persons for plantations.

2. The Jesuits' plantation was confiscated by the King of France, and was subsequently divided and sold by the French Government in the year 1763. The first subdivision above Canal street was for seven arpents fronting on the river "face au fleuve." Five other equal subdivisions were sold in like manner.

The first of these subdivisions is what is now generally known as the Gravier claim.

The second, as the Delord Sarpy claim.

3. About the year 1788, Bertrand Gravier, who then owned the
395 first of the above-mentioned subdivisions, laid off the same into streets, squares, and lots, converting the ground from rural to urban property.

By the act of the legislature of Louisiana of 1805, incorporating the city of New Orleans, the boundary of the city was extended so as to include the whole of the original Jesuits' plantation.

By subsequent acts the boundary has been gradually extended above the town of Carrollton.

All the grants of land between New Orleans and Carrollton which were originally made for plantations fronting on the river have since been converted, at various times, by the proprietors into urban property. In doing so there was always a space left between the nearest street running parallel to the river and the river for the public use. The Delord Sarpy tract and the next one above, to wit, the Saulet tract, were converted into urban property in the year 1806.

4. When the Gravier and Delord Sarpy claim were thus converted into city property the street now called Tchoupitoulas, as per maps in evidence, was the nearest street to the river; the division line between the above two claims was about the intersection of Tchoupitoulas with the upper line of Delord street. The subsequent accretions of batture were divided by a line running at right angles to the river at that point.

5. In the year 1805 John Gravier, claiming to be the owner of the ground heretofore described as belonging to the first subdivision of the Jesuits' plantation above Canal street, and of the accretions formed between Tchoupitoulas street and the river in front of his land, brought suit in the superior court of the Territory of Orleans against the city of New Orleans, alleging his ownership of the said property and of the said accretion in front thereof, and that he had been disturbed in the

possession of said accretion by the said city. In this suit he recovered judgment against the city. The petition, answer, and judgment of said court, as found in the printed copy of the brief of Mr. Roselius, in the de la Bigarre case, are admitted in evidence.

It was in reference to this property that the compromise of 1820, in evidence, was made.

Subsequently the city built wharves and levees in front of the Gravier claim and of the Delord Sarpy claim, and at various other places above, for the convenience of the public and the commerce of the place.

The city has kept up the said wharves and levees since, repeatedly advancing the said wharves and levees, owing to the continued increase of the width of the said batture by deposits from the river.

That since the termination of the late civil war alone the city has expended upon wharves and levees over one million of dollars, a very considerable portion of which was expended on the wharves and levees between Canal and Calliope streets.

That throughout the above-mentioned period the city has had the undisturbed possession of said wharves, and has enjoyed therefrom a large revenue, until disturbed by the said Chattanooga Railroad Company, and the public and the plaintiff have for the same period of time used the space between Pilie street and the river, the wharves, as public places.

6. It is agreed that the following evidence taken in the trial of this case against Charles Morgan may be used in this case, to wit:

The testimony of Pilie, with the maps made by him, except that portion of his testimony which relates to the ferry privileges of C. Morgan and the space necessary therefor.

396 And also the testimony of Fosdick and Burdeau, with the same reservation.

It is agreed, however, that the counsel for the defendant shall have an opportunity of cross-examining the said witnesses upon the above evidence.

The witnesses above named to appear, if possible, at the office of defendants' counsel.

7. The New Orleans, Mobile, and Chattanooga Railroad Company claims the space in controversy by virtue of various acts of the legislature of the State, to wit: the act of August 18, 1868; also of February 17, 1869; also of March 6, 1869, and of the act of February 21, 1870, all of which acts have been accepted by the said railroad company.

And further, under the several acts of conveyance to said company, filed in evidence, which titles are recognized as sufficient to transfer the property therein mentioned as far as they are able to transfer the property consistently with the public right of the State or the city of New Orleans or the people of the State.

The map marked A B C, filed herewith, is proved by the testimony of H. Van Vleck, the engineer of the railroad company, as exhibiting the exact description of the lands described in the acts of the legislature of this State and the titles of the said corporation defendants as exhibited thereon. Plaintiffs' counsel files in evidence the copy of petition in the case of New Orleans, Mobile, and Chattanooga Railroad Company vs. City of New Orleans, eighth district court; also maps

accompanying compromise of 1820 and 1851—one by Dunbar, one by Pilie.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
For Defendants.

(Signed) ELMORE & KING, *Attorneys for Plaintiff.*

Certificate.

I hereby certify that the foregoing is a true and correct copy of the testimony of W. S. Williams, admissions, and also copy of map filed in the case of J. T. Burdeau vs. Chas. Morgan et als., No. 1982 of the docket of the seventh district court for the parish of Orleans.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, on this 14th February, in the year of our Lord 1871, and in the ninety-fifth year of the Independence of the United States of America.

[SEAL.] (Signed) A. D. BERNOUDY,
Clerk Seventh District Court.

397 *Document No.* 1.—*Act between the city and B. Marigny.—Filed February* 15, 1871.

June 17, 1805.—Act between the city and Mr. B. Marigny.

On this the seventeenth day of June, one thousand eight hundred and five, and in the twentieth year of the Independence of the United States of North America, between the undersigned, Bernard de Marigny, owner of the plantation bordering on the northeast limit of the city, a minor in age, duly assisted by Mr. Solomon Prevost, his curator, and legally authorized by ordinance of the superior court of the Territory of Orleans, under date of the twenty-fifth of May ultimo, granted upon the request of the twenty-second of the same month, the original of which is to remain annexed to the present act, on the one hand—

And Jaques Pitot, mayor of the city and suburbs of New Orleans, duly authorized to execute the present act by the decree of the city council, under date of the eighteenth May ultimo, the execution of which in form shall remain annexed to the present act, on the other hand—

In accordance both with the terms of the act of the legislative council, under date of the nineteenth of April ultimo, a copy whereof is hereto annexed, and which authorizes the division of Mr. Bernard de Marigny's plantation into a faubourg, and of the decree of city council aforementioned, and the figurative (descriptive) plan of said division made by Mr. N. Definuels the twenty-first of said month, approved by Mr. Marigny, which is also annexed to the present act, to serve as incontestable archives, the following has been agreed upon, to wit:

Mr. Bernard de Marigny, duly assisted as aforesaid, declares, that submitting himself absolutely to the act of the legislative council aforementioned, which orders an understanding with the city council for the establishing his plantation in a faubourg, he confirms in perpetuity for himself, his heirs, and assigns, in favor of the corporation of New Orleans, the offers, advantages, abandonment, and donations mentioned in the aforesaid decree of the city council, as follows:

1. He acknowledges to give and abandon and leave in full ownership, as is above stated, to the corporation of New Orleans twelve lots, forming a whole square, as a public place of said faubourg, distinguished

on said plan by these words, "Public Place," and by a difference in the coloring.

2. He acknowledges making a similar cession of incontestable property, in favor of the same corporation, of another square, distinguished on said plan by the words, "Site for the Hospital," and located at the extreme end, on the left bank of the canal, for the establishing of said hospital.

3. He acknowledges, moreover, to make a similar cession of property, always in favor of the same corporation, of fifty feet of land, in the whole depth of said faubourg, on each bank of his canal, just as it is traced on the plan, to make streets and public promenades, having also carried at fifty feet on said plan, the width of said canal; it being his intention to open it to this width if he thinks proper, reserving the right then to throw his excavations to the right and to the left of the banks which he cedes to the corporation.

4. And finally he acknowledges to make a similar cession and like abandonment of property in favor of the said corporation, for the use of the commerce of the alluvion or batture beyond the levee of the road bordering the river, the entire length of said faubourg. And the
398 said Jaques Pitot, mayor of the city, authorized and acting as aforesaid, declares, that on behalf of said corporation he accepts, as in fact he does accept, all the cessions, donations, and abandonments of properties aforementioned in favor of said corporation, and in conformity with the act of the legislative council of the nineteenth of April ultimo, he confirms, in his aforesaid capacity, and because of the benefit which results therefrom to his constituents, the decree of the city council under date of the eighteenth May following, authorizing Mr. Bernard de Marigny to cause to be located all divisions and boundaries, in conformity with the plan and with the present act. And finally, Mr. Solomon Prevost, in his capacity as curator, duly authorized, declares that he has taken full and entire cognizance of all the transactions or acts relating to these proceedings between the corporation of New Orleans and his ward, and that with him, conjointly and irrevocably, he approves all the clauses.

And the said Pitot, in his capacity aforesaid, and authorized as aforesaid by the corporation of this city, declares, moreover, in the name of said corporation, that he acknowledges and confirms, fully and irrevocably, the boundary between the city and the projected faubourg, just as it is indicated on the plan by the line B C, preserving to said de Marigny the opening of his canal as it also exists on said plan, barring his responsibil'y as to whom it may concern as to the maintenance of said canal and to drainage.

In faith whereof, we, the said Bernard de Marigny, Solomon Prevost, and Jaques Pitot, conjointly and in presence of the undersigned witnesses, have signed and sealed the present act, to give it full force and effect.

[SEAL.] Done and passed at the city hall of New Orleans on the day, month and year first above written.

(Signed) BERNARD MARIGNY.
" SOLOMON PREVOST.
" J. PITOT.

And on margin:
(Signed.) J. CHABAUD.
" CH. DURNFORD,
Witnesses.

A true copy of the minutes of the proceedings deposited in the archives of the city council.

BOURGOIS,
Rec. Sec.

CITY OF NEW ORLEANS:

I, Jaques Pitot, mayor of the city of New Orleans, in the Territory of Orleans, certify, declare, and cause to be made known to whom it may concern, or to whom these presents may come, that the preceding copy conforms to the original act passed between Bernard de Marigny and the corporation of said city, of which a deposit was made in the archives; that the Sieur Bourgois who signed said copy is the recording secretary of the council of said city, and that as such, full faith and credence should be given to his signature.

399 In faith whereof, I have signed these presents and caused to be affixed the seal of the mayoralty of the said city this nineteenth June, 1805.

[SEAL.] (Signed) J. PITOT, *Mayor.*

I certify the foregoing to be a true copy of the original deposited in the archives of the city council of New Orleans.

(Signed) GALLIEN PREVAL, *Secretary.*

NEW ORLEANS, *May* 14, 1839.

Document 2—Decree of council, sitting of May 18, 1805.—*Filed February* 15, 1871.

Decree of the city council, sitting of May 18, 1805.

By an act of the legislative council, under date of the nineteenth of April last, Mr. Bernard Marigny having been authorized to establish a faubourg on the land occupied by his plantation, under stipulation that he should refer to the council before commencing the undertaking, the said Mr. Marigny made known his intentions to the council; but some contestation having arisen as to boundaries, a committee was appointed at the sitting of the thirteenth of April last for the purpose of investigating the matter, and in its report of this day the committee says, that from its investigation and the documents which it has been able to procure, it is no' of the opinion that the city is justified in contesting Mr. Marigny's boundaries as determined by the Spanish Government, and it relies upon the following reasons, to wit:

1st. We have always—say the members of the committee—since the cession of this colony to Spain by France, been ignora't of the points to which the King's lands extended towards those of the Dubreuil plantation, and from a plan by Engineer De Verges dated the second of February, 1760, it was thought they went no further than twenty toises, starting from the last square of the city. Under the belief that the lands of the old fortifications belonged to the said Dubrueil plantation, the city government authorized Mr. Maxent, who had become owner of this plantation, to take possession of these lands, occupied till then by fortifications which had become useless. Mr. De Carondelet having re-established these fortifications, and Mr. De Sigur, then owner and the possessor of these lands under the government of M. De Gayoso, having raised claims, it was discovered in the act of adjudication of the Dubrueil plantation, dated December 18, 1758, that Mr. De

Villars had inserted a declaration in the said act by which he announced that the King had a just right of property on two arpents, twelve toises, on which the usufructuary had obtained permission to establish certain buildings, and the enjoyment of which was granted to him until such time as the government needed it; but inasmuch as Mr. De Villars did not indicate the point from which these two arpents were to be measured, the government, in order to avoid all difficulty, ordered that said two arpents, twelve toises should be computed from the angle of the barracks, which was done, as is certified to by Messrs. Ch. Trudeau, surveyor-general, Gilbert Guillemord, major of the post Française, Renno, commissioner, appointed by the city, and lastly by the Marquis of Casa Calvo, commissioner of His Catholic Majesty for the cession of Louisiana.

2d. There is an application made by the Baron of Carondelet, and granted by the King, under date of the twenty-first of December, 1797, allowing the city to dispose of lands which are outside of the fortifications to a distance of three hundred toises—meaning such lands as had not been disposed of at the time. From information which the committee derives from Mr. De Castenado, former register and treasurer of the city, this royal permit occurred under the government of Mr. De Gayoso, and is registered in the books of the Cabildo. If this permission also authorized the city to dispose of the lands of the fortifications when they ceased to be of use, then, beyond question, was the proper time for the city to avail itself of the privilege to establish what lands belonged to it, and to distinguish them from the lands of the King by well defined boundaries, and to designate them on the general plan which would have been made. By this means the city would have been in possession of a title which the Cabildo would not have failed to enforce in opposition to the limit in question, if in their judgment the limit as fixed was detrimental to the interests of the city; but far from adopting these measures, or even raising the slightest objection, the city seems, on the contrary, to have lent itself to the fixing of the limits by appointing commissioners to assist in this operation, which would not have been done had the city believed itself justifiable in opposing the matter.

400

3d. As there is no evidence of a formal act of the city reciting any legal objection to this operation, and inasmuch as the governors of H. C. M. have been clothed with full powers to concede and to compromise in his name, it would seem that the council is not justifiable in provoking a retroactive effect. Even if the city had been damaged particularly when, in the order transmitted by the King to his commissioners for the cession of this country to France under date of the fifteenth of October, 1802, he confirms all concessions and properties granted by his governors of whatsoever nature, even though they had not been approved of by him at a prior epoch, the security of territorial property in this country demands that nothing should be done in opposition to this generous and beneficent determination, for such a course would be opening the door to continual litigation, ruinous to such property-holders as are not possessed of regular titles, and most of them are in this category.

4th. Besides these considerations, the committee is of opinion that the advantages offered to the public by the said Marigny in establishing his land in a faubourg, sufficiently powerful motive not to raise any difficulty in acknowledging the boundary which was traced by order of the governor, Gayoso de Limas. These advantages consist in the cession to the city of twelve lots forming a whole square, for a pub-

lic place; in the cession of another square for the site of a hospital; in the cession of fifty feet on the bank of his canal in the whole depth of said faubourg, for the purpose of making a road or public promenade; and moreover, in the abandoning of all the lands outside of his levee on the front of his plantation for the purposes of commerce, as appears from the plan which will be presented to the council by the said Mr. Marigny and submitted for its approval, barring such observations as he will think proper to make on this subject.

The council approves this report unanimously, and decrees that Mr. Bernard Marigny shall sign an authentic act clothed with all the requisite formalities, in which he shall confirm the cessions aforementioned made by him in perpetuity to the city, and that the plan
401 which he has furnished shall remain annexed to the said act, and both of them shall be deposited in the archives of the city council.

(Signed) JOHN WATKINS.

By the president.

(Signed) BOURGOIS,
Rec. Sec.

Approved:

(Signed) J. PITOT, *Mayor.*

A true copy:

(Signed) BOURGOIS,
Rec. Sec.

CITY OF NEW ORLEANS:

I, Jaques Pitot, mayor of the city of New Orleans, certify and declare and cause to be known to whom it may concern, or by whom these presents may be seen, that the preceding is a copy of the decree of the city council to which reference is made in the act passed between Mr. Bernard de Marigny and the corporation of the said city; that Mr. Bourgois, who signed said copy, is recording secretary of said council, and that in this capacity full faith is to be given to his signature.

In faith whereof I have signed these presents and caused to be affixed the seal of the mayoralty of said city, this nineteenth of June, 1805.

[L. S.] (Signed) J. PITOT, *Mayor.*

I certify the foregoing copy to be a true copy of the original deposited in the archives of the city council.

(Signed) GALLIEN PREVAL,
Secretary.

NEW ORLEANS, *May* 14, 1830.

Document No. 3.—Copy of the title of the directory plan.—Filed February 15, 1871.

Copy of the title of the directory plan (plan directeur) of faubourg Marigny deposited in the archives of the city council of New Orleans.

Plan and design of Mr. Marigny's faubourg.

NOTA.—1. The dividing line between the city and the faubourg fixed by the plan is A B C.

2. The canal represents fifty feet in width, from the river to Bayou St. John.

3. The streets and promenades on each side of the canal, in the depth of the faubourg, are also fifty feet. All the other streets are forty-six feet wide, except the one which was the dividing line with Mr. Daunoy, which represents a width of forty-eight feet, because Mr. Ber-
402 nard Marigny reserves two feet for his use on the side which is the limit of Mr. Daunoy.

New Orleans, May 21, 1805.

(Signed) N. DEFINIELS.

Approved:

(Signed) BERNARD MARIGNY.

Approved by the city council, May 22, 1805.

(Signed) JOHN WATKINS.

By the president:

(Signed) BOURGEOIS,
Rec. Sec.

Then follows the certified and approved annexed plan, to me addressed by the city council, for the purpose of passing the act of this date between Mr. Bernard de Marigny and the corporation, is certified to and approved.

New Orleans, June 17, 1805.

(Signed) JAS. PITOT, *Mayor.*

A true copy:

New Orleans, September 20, 1809.

(Signed) M. BOURGEOIS,
Rec. Sec.

I certify the foregoing copy to be a true copy from the original deposited in the archives of the council.

(Signed) GALLIEN PREVAL,
Secretary.

NEW ORLEANS, *May* 14, 1830.

Deed of sale from Edmond Burthe to N. O., M. and C. R. R. Co.—Filed February 15, 1871.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that on this day, before me, Selim Magner, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, personally came and appeared Edmond Burthe, of this city, party of the first part, Louis Florval Générés, of this city, party of the second part, and William S. Williams, of this city, treasurer of, and herein acting for, the New Orleans, Mobile and Chattanooga Railroad Company, in the absence of James A. Raynor, president of said company, parties of the third part.

Which said appearers declared that whereas proceedings were instituted in the fifth district court for the parish of Orleans by said New Orleans, Mobile and Chattanooga Railroad Company, in conformity with the provisions of law and their charter of incor-

poration, in order to the forced expropriation of two certain lots of ground situate on the batture in front of this city, to wit: Two lots of ground with all the rights, ways, servitudes, privileges and advantages thereunto belonging or in anywise appertaining, situate in the first district of this city, in the square bounded by Water, Pilié, Calliope and St. Joseph streets, designated by
403 the numbers eleven and twelve, on a sketch made by Pilié & Murray, architects and surveyors, dated 17th December, 1868, annexed to the inventory of the estate of A. Leonce Burthe, deceased, passed in the office of James D. Augustin, a notary public in this city, on the thirty-first of December, 1868, said lots measuring as follows, viz: Lot No. eleven, sixty-five feet four inches on Water street, sixty-three feet two inches and four lines front on Pilié street, by a depth of one hundred and twenty feet two inches and five lines on the line dividing it from lot No. ten. Lot No. twelve measures sixty-five feet four inches front on Water street, sixty-three feet two inches and four lines front on Pilié street, by one hundred and twenty feet in depth on the line nearest to St. Joseph street, and one hundred and twenty feet one inch and two lines in depth on the other side, dividing it from lot No. eleven, said proceedings being numbered 1143 of the docket of said court; and, whereas, by a judgment or decree rendered therein on the twenty-fifth of April, 1870, the report which had been made by the commissioners of appeal appointed in said case, whereby said two lots of ground were estimated as worth in the aggregate twelve thousand dollars was confirmed, and the amount to be paid by said railroad company to the owners of said lots Nos. eleven and twelve was decreed to be paid to the owners thereof as full compensation therefor, fixed at the said sum of twelve thousand dollars; and whereas, said court did further order and decree that said sum of twelve thousand dollars, the price of said lots, should be paid to the aforenamed Edmond Burthe as sole owner thereof, and alone entitled to receive said price, the whole of which fully appears from the certified copy of said judgment hereto annexed for reference and as part hereof—

Now, therefore, for and in consideration of the said judgment and decree, as also in pursuance of a previous understanding between the parties to this act, namely, said Burthe and Générés of the one part, and said railroad company of the other part, he, the said Edmond Burthe, does, by these presents, grant, bargain, and sell with all legal warrantees and with subrogation to all rights and actions in warranty against all preceding vendors or possessors, unto the said New Orleans, Mobile and Chattanooga Railroad Company, herein represented by said William S. Williams, present as aforesaid, and accepting for the said company, its successors and assigns, the above-described two several lots of ground numbers eleven and twelve, with the rights, ways, servitudes, privileges, and advantages thereunto belonging, or in any wise appertaining.

Which property was acquired by said Edmond Burthe by purchase from the joint owners thereof by act passed before the undersigned notary, on the twenty-third of May, eighteen hundred and sixty-nine.

This sale is made for and in consideration of said sum of twelve thousand dollars in full satisfaction of said judgment or decree, and in full payment of said two lots of ground, which amount has been paid by said railroad company in current funds of the United States of America to said Edmond Burthe, who acknowledges the receipt thereof and grants acq'ittance for the same.

Said railroad company shall pay whatever taxes shall be due on said

property for the year 1869 and this current year; as for the taxes and drainage due on said property up to the year 1869, the said Edmond Burthe and Louis Florval Générés declared that the same have been paid, but they, nevertheless, bind themselves for the payment of all taxes or drainage which might be due up to the first January, 1869.

By reference to the annexed certificate of the register of conveyances and recorder of mortgages, it appears that said property has not
404 been alienated in the name of said Edmond Burthe prior to the date hereof, and that the same is free from incumbrance in his name, with the exception of the draining privilege.

The United States stamps of twelve dollars on this act are hereto attached.

And thereupon the said Louis Florval Générés declared that he does hereby bind himself in solido with him, said Edmond Burthe, for the validity of the title of said property, and warrants the same.

And thereupon personally came and appeared and intervened to this act Mistress Louise Burthe, of lawful age, wife of said Edmond Burthe, who, being herein duly authorized and assisted by her said husband, took cognizance of the foregoing act of sale, which I, notary, carefully read and explained to her, and having so done she declared that it was her intention not only to ratify said sale, but to make renunciation of all rights she has by mortgage or otherwise on the said property, upon which I, notary, declared to her separately and apart from her said husband and out of his presence, as it is my duty, that by the laws of this State she possessed a general mortgage on all the property of her said husband, and upon that of the community, in case she should renounce thereto—

First, for the restitution of her dower and the reinvestment of dotal property brought by her in marriage.

Second, for the restitution of dotal property by her acquired during marriage, by inheritance, donation, or otherwise.

Third, for indemnity against all debts contracted, or which she may hereafter contract with her said husband.

Fourth, for such of her paraphernal property and funds as may have been alienated by her said husband, or of which he has had or may have the administration or enjoyment, or of which he may otherwise have benefited.

Fifth, for nuptial presents made to her by her said husband or others. That in making her intended renunciation she would deprive herself irrevocably and forever of all rights of reclamation against said property, whether under mortgage privilege or otherwise. Whereupon the said wife declared that she still persisted in the intention she had announced to ratify said act of sale, and to dispossess herself of all rights and liens which she has upon said property, whether by marriage contract, dower, donation, or otherwise; and the said husband being now again present before me, and authorizing his said wife, she again declared that she does hereby formally renounce, henceforth and forever, all and singular, her said rights, and transfer the same to the said purchasers, successors and assigns, to be had and held by them *and them*, and by them enjoyed in law and thereout, and she hereby binds herself and her heirs to the said purchasers, their successors and assigns, that she and they shall and will, at all times, acknowledge the validity of the present sale, and of the renunciation she now makes of all rights which she has or may have in and to the property herein and hereby sold, and that neither she nor they shall ever seek to oppose or impair the force of this act, hereby renouncing the benefit of all laws, privi-

leges, and customs of which she might avail herself, or which are in her favor in the premises.

Done and passed at New Orleans the sixth day of June, eighteen hundred and seventy, in presence of James Fahey and Theophilus M. Hyde, witnesses residing in this city, who have signed their names with the said appearers and me, notary, after reading thereof.

(Original signed) LOUISE BURTHE.
EDM. BURTHE.
L. F. GENERES.
W. S. WILLIAMS.
JAS. FAHEY.
THEO. M. HYDE.
S. MAGNER, *Not. Pub.*

STATE OF LOUISIANA,
Parish of Orleans:

I, Andrew Hero, jr., a notary public and the custodian of notarial records in *in* and for this parish and city of New Orleans, duly commissioned and qualified, do certify the above and foregoing as being a true and correct copy of the original act extant in the notarial record of Selim Magner, formerly a notary public in this city, and whose notarial records I hold as custodian thereof.

As attest my hand and seal as custodian as aforesaid, at New Orleans, this 13th February, A. D. 1871.

[SEAL.] ANDREW HERO, JR.,
Custodian of Notarial Records.

Registered in conveyance office, B. 96, fo. 740 and 741, New Orleans, June 6, 1870. Registry fees, $3.

W. R. FISH, *Register.*

Documents No. 4, 5, 6, 7 and 8—Extract from minutes, city council of New Orleans.—Filed February 15, 1871.

NUMBER FOUR.

Extract from the minutes of the city council of New Orleans. Sitting of the 22d October, 1810.

DECREED—That the mayor be directed to write to Mr. Marigny and request his consent to the taking by the city of some earth, within that space which he has reserved to himself for the opening of a canal, the excavation to begin, however, from the river; which earth is to be used on the works of the aforementioned levee.

A true extract.

(Signed) M. BOURGEOIS, *Secretary.*

I certify the above *copy* to be a true copy of the original deposited in the archives of the council.

New Orleans, 14th May, 1830.

(Signed) GALLIEN PREVAL, *Secretary.*

NUMBER FIVE.

City council of New Orleans.

The council having requested Mr. Marigny to construct the levee in front of his canal, or allow the city to have it done, and also that instead of his constructing a bridge over the canal, at the crossing
406 of the road it would be preferable that he should have the canal filled up at those places to an equal width with the road, or to allow the city to have that change affected; Mr. Marigny answered that he grants leave to the city to continue, at its pleasure, the works on the levee in front of his canal, as well as to fill up the canal, in lieu of a bridge, where the road stands; provided, however, and with the express understanding, that when he will open his canal (or those subrogated to his rights) to the river, he may make it to the width to him most convenient, not to exceed fifty feet, without any opposition on the part of the city to that effect; and provided, also, that the leave which he hereby grants the city shall not by it be construed or interpreted as an acquisition of title to property to the width of fifty feet from the river to the levee, but that said space shall be acknowledged by the city council to be his (Marigny's) property.

The city council decreed that, according to the conditions stated by Mr. Marigny at this day's sitting, the mayor is hereby authorized to cause the levee opposite Marigny's Canal to be made; and also to cause the said canal to be filled up, where the bridge stands, the whole width of the road. Deliberations of the city council, at their sitting of the 23d October, 1811.

(Signed) M. BOURGEOIS, *Rec. Sec.*

NUMBER SIX.

City council of New Orleans.

The city council, considering the observations presented by the mayor, touching their decree of the 23d October last, which was rendered upon the representations of Mr. Marigny in relation to that portion of his canal situated between the highway and the river, do hereby declare that by the right of property, which they recognize to Mr. Marigny on that space of ground, they do not mean to recognize any other right than that which Mr. Marigny has to have a canal there, and to take on said space of ground all the earth he may deem necessary for his own use. The council further declare that by the act of the 17th June, 1805, between the corporation and Mr. Marigny, the said Marigny has the above-mentioned rights.

With the preceding explanation the council do therefore persist in their decree of the 23d October last.

Deliberations of the city council, at their sitting of the 23d November, 1811.

(Signed) M. BOURGEOIS, *Secretary.*

I certify the above to be a true copy of the original, deposited in the archives of the city council.

New Orleans, 13th May, 1830.

(Signed) GALLIEN PREVAL, *Secretary.*

NUMBER SEVEN.

Between the undersigned, Joseph Roffignac, mayor of New Orleans, herein acting in the name of the mayor, aldermen and inhabitants of the said city of New Orleans, by virtue of a resolution of the city council, approved the 12th October of the present year, a copy whereof is hereunto annexed, of the one part, and Bernard Marigny, domiciliated in the said city of New Orleans, of the other part, the following agreement was entered into, to wit:

407 I, Bernard Marigny, having taken cognizance of the abovementioned resolution of the city council, copy whereof is hereto annexed, do by these presents, for myself, my heirs and assigns, give unto the mayor and city council of New Orleans my full and entire consent to the constructing, at their own expense, one or more bridges, to be placed across Marigny's Canal, situate in the faubourg of that name, and which canal is my property, and which said bridges may be placed successively across said canal, as the said mayor and city council may deem necessary to facilitate the communications between the city and the faubourg Marigny. The whole under the express conditions, without which this consent would not have been given:

1. That no bridge will be placed across the canal unless it be in line with the streets parallel to the river and which lead to the canal. That the width of each of those bridges shall not exceed the width of the street opposite which they are respectively placed, and that the maintaining and keeping in repair of the same shall be at the cost of the said mayor and city council.

2. That in case the said canal should be converted into a basin or a navigation canal, the said bridges shall be demolished, and the earth, timbers, and other materials proceeding therefrom shall be removed upon a request to that effect made to the mayor of the city of New Orleans either by me or my heirs or assigns.

3. That should said bridges not be demolished fifteen days, at least, after due notice to the mayor, in the manner aforesaid, then it will be lawful for myself, my heirs or assigns to have the said bridges demolished, and the earth, timbers, and other materials removed at the cost of the said mayor and city council.

And I, Joseph Roffignac, in my aforesaid capacity, and acting as aforesaid, do by these presents accept, for and in behalf of the mayor, aldermen and inhabitants of New Orleans the conditions under which Mr. Bernard Marigny gives his consent to the construction of one or more bridges across Marigny Canal, at the expense of the said mayor, aldermen and inhabitants, to facilitate the communications between the city and faubourg Marigny, and which conditions are: That no bridge will be placed across the canal unless it be facing upon streets parallel to the river and leading to the said canal; that the width of each of those bridges shall not exceed the width of the street opposite which they are respectively placed; and that the maintaining and keeping in order of said bridges shall be at the costs of the said mayor and city council of New Orleans.

That in case the said canal should be converted into a basin or a navigation canal, the said bridges shall be demolished, and the earth, timbers, and other materials proceeding therefrom shall be removed upon the first request made to that effect to the mayor of the city of New Orleans, by the said Mr. Bernard Marigny, or by his heirs or assigns.

And finally, that should said bridges not be demolished fifteen days,

at latest, after due notice to the mayor, in the manner aforesaid, the demolishing of the bridges and the removal of the earth, timbers and materials proceeding therefrom may be made upon the order of the said Mr. Marigny, his heirs or assigns, and the whole at the costs of the said mayor, aldermen and inhabitants of New Orleans.

The whole of which has thus been agreed upon between us.

408 Made in duplicate and in good faith, under our respective private signatures, at New Orleans, the 28th October, 1820.

(Signed) BERNARD MARIGNY.
" J. ROFFIGNAC.

Signed in presence of—
JULES DAVEZAC.
ME. BOURGEOIS.

NUMBER EIGHT.

City council of New Orleans, sitting of the 7th October, 1820.

A communication from Mr. Bernard Marigny was read, by which he informed the council that he would make no opposition to the construction of a bridge across Marigny Canal, on a line with Casacalvo street; provided, that in case the same canal should be converted into a basin or navigation canal, the city council will put no impediment to the breaking up of said bridge. And in the same letter Mr. Marigny asks that an act be previously passed in which the above conditions be stipulated.

On motion—

Resolved, That the mayor be authorized to accept the above-mentioned condition, as well with regard to the bridge to be constructed across that part of Marigny Canal on Casacalvo street, as with regard to all other bridges which might be hereafter constructed by the corporation on various parts of the said canal to facilitate the communications between the city and faubourg Marigny; and that an act under private signature be passed between Mr. Bernard Marigny, on the one part, and the mayor, acting in the name of the corporation, on the other part, in which shall be stipulated the clause, which is the object of the present resolution.

(Signed) J. SOULIE, *Recorder.*

Approved this 12th October, 1820.
(Signed) J. ROFFIGNAC, *Mayor.*

A true copy:
(Signed) M. BOURGEOIS, *Secretary.*

I certify the foregoing to be a true copy from the original deposited in the archives of the city council.

New Orleans, 14th May, 1830.
(Signed) GALLIEN PREVAL, *Secretary.*

409 *Continuance.—Extract from the minutes of February* 15, 1871.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 19.

This case, continued to this day for argument, came on. Counsel engaged present.

When, after hearing argument of J. B. Eustis, attorney for N. O., M.

and C. R. R. Co., this case was ordered to be continued to Thursday, February 16, 1871, at 11 o'clock a. m.

Continuance.—Extract from the minutes of February 16, 1871.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 19.

This case, continued to this day for argument, came on.

When, after hearing argument of J. A. Campbell, counsel for Chattanooga Railroad Company, this case was ordered to be continued to to-morrow at 11 o'clock a. m.

Case submitted.—Extract from the minutes of February 17, 1871.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 19.

This case, continued to this day for argument, came on.

When, after hearing argument from J. A. Campbell, esq., and Thomas A. Clarke, the court took this case under advisement.

410 RECORD OF SUIT NO. 2757, SEVENTH DISTRICT COURT.—FILED MAY 7, 1870.

State of Louisiana, eighth district court for the parish of Orleans.

PONTCHARTRAIN RAILROAD COMPANY
versus
NEW ORLEANS, MOBILE AND CHATTANOOGA Railroad Company. } No. 116.

State of Louisiana, seventh district court for the parish of Orleans.

THE PONTCHARTRAIN R. R. Co.
vs.
N. O., M. AND C. R. R. Co. } No. 2757.

NOTE.—This suit, originally instituted in the seventh district court for the parish of Orleans, was, in conformity with the act of the general assembly creating the eighth district court for the parish of Orleans, transferred to said eighth district court, there to be tried and determined.

Petition.—Filed February 21, 1870.

To the honorable the judge of the seventh district court for the parish of Orleans:

The petition of the Pontchartrain Railroad Company, a corporation established by the laws of this State, and domiciled in New Orleans, respectfully shows:

That petitioner was duly incorporated by an act of the legislature, approved January 20, 1830, with power to construct a railroad from New Orleans to Lake Pontchartrain, and to enjoy the corporate privi-

leges and franchises set forth in said act; that by said act of incorporation petitioner was clothed with all the rights and powers necessary for the construction of said railroad from New Orleans to some
411 suitable point on Lake Pontchartrain, not exceeding ninety feet in width, with as many sets of tracks as said company may deem proper, and by said act petitioner is to have perpetual succession under its corporate name; all of which is more fully shown by said act, which is specially referred to for fuller explanation and greater certainty.

That by the ordinance of the city council of the city of New Orleans, approved March 15, 1830, petitioner was authorized, during the whole period of the existence of its charter, to cause the said railroad to run in the street, road, or walking avenue which lines the space of ground reserved by Bernard Marigny, and know' under the appellation of Marigny Canal at the period when he established the old and new suburb, starting from the bend of said canal to Levee street, the whole to be established under the direction of the city surveyor, which was done, as more fully appears by reference to said ordinance, specially referred to for fuller explanation and greater certainty and is annexed as part hereof, which space of ground belonged to said city at the date of said grant.

That said space of ground embraces two strips of land twelve feet in width, one upon each side of and adjoining a certain strip of land in the central portion of Elysian Fields street, running fifty French feet wide, extending from the river to the elbow of the canal Marigny, which fifty feet were acquired by purchase from said Marigny by act before Felix de Armas, notary, of date the twenty-third February, 1830, annexed as part hereof; and said two strips of land each of twelve feet in width, and said strip of fifty French feet wide, is shown on a plan made by C. A. de Armas, surveyor, of date twenty-first September, 1855, herewith filed, and specially referred to for fuller explanation and greater certainty.

That upon the faith of said grant, and in accordance with the charter of petitioner, it has constructed and located on one of said strips of twelve feet wide, to wit, on the strip on the lower side of said strip of fifty French feet wide, for the use of its engines and cars, the tracks of its railroad with its requisite curves, and said tracks are laid along and upon said strip of twelve feet wide throughout its whole length and extent; that upon both of said strips of twelve feet wide, and upon the strips acquired by petitioner from said Marigny, it has erected its depots and necessary buildings for the deposit of the freight and for the accommodation of the travelers upon said road; that said tracks, said depots and buildings are of great value; that said tracks have been laid as aforesaid for upwards of thirty-five years; that during the same period the depots and necessary buildings aforesaid of petitioner have been located and erected upon both said strips of twelve feet wide, and upon said strip of fifty feet wide, and during the same period petitioner has been in the peaceable and undisturbed possession of its said tracks, its said depot and buildings, and its engines and cars during said period have been running upon said tracks; that said tracks, depots and buildings are of great value to petitioner, have been located and constructed by a large expenditure of money; that said value exceeds seven hundred thousand dollars; all of which expenditure has been made by petitioner upon the faith of said grant and of its corporate privileges conferred by its said charter.

That by reason of the premises petitioner is entitled to the exclusive use and possession and enjoyment of said two strips each of twelve

feet in width and of said strip of fifty French feet wide, and to be maintained in said use, possession, and enjoyment during the whole period of the existence of its charter; that to said use, possession, and enjoyment it has a vested right; that said charter and grant of said city are contracts with petitioner; that petitioner's use, possession,
412 and enjoyment of said two strips of land each of twelve feet in width, and of said strip of fifty French feet wide cannot be molested, disturbed, or taken from petitioner without impairing the obligation of said contracts, and without violating the provisions of the Constitution of the United States, and of the State of Louisiana protecting said contracts.

That said tracks have been laid and constructed, said depot and buildings have been erected, said engines and cars have been running, and petitioner has been in the peaceable possession and exercise of all its rights and privileges for said period of thirty-five years, with the assent, sanction, and approbation of the mayor, aldermen, and inhabitants of the city of New Orleans.

That the New Orleans, Mobile and Chattanooga Railroad Company, a corporation established by the laws of Louisiana, domiciled in New Orleans, threaten and are about to interfere and disturb petitioner in the use, possession, and enjoyment of said two strips of land each of twelve feet in width and of said strip of fifty French feet wide, and are about to locate and construct, for the passage of its engines and cars, the tracks of its railroad from the levee along and upon the portions of Elysian Fields street and intervening streets, said portion constituting and being said two strips of ground twelve feet in width, one upon each side of and adjoining said strip of fifty feet wide acquired by petitioner from Bernard Marigny as aforesaid, and upon one of which strips the tracks of petitioner's railroad are already laid, without even attempting to expropriate petitioner's property in the mode governing expropriations, and without even offering compensation to petitioner.

That if the said New Orleans, Mobile and Chattanooga Railroad Company are permitted to consummate said interference and disturbance of said petitioner's said use, possession, and enjoyment, and to locate and construct their said tracks as aforesaid, they will inflict injury and wrong upon petitioner of an irreparable character; that said injury and wrong will largely exceed five hundred dollars in value, and an injunction is necessary for the protection of petitioner's rights in the premises.

Wherefore petitioner prays that, considering the affidavit and bond hereto annexed, a writ of injunction issue, directed to said New Orleans, Mobile and Chattanooga Railroad Company, its officers and agents, prohibiting them from interfering with or disturbing petitioner in any manner in the use, possession, and enjoyment of said two strips of land of twelve feet in width, and of said strip of fifty French feet wide, and from locating and constructing along and upon said two strips the tracks of the railroad of said New Orleans, Mobile and Chattanooga Railroad Company, and from interfering with or disturbing in any manner the running of petitioner's engines and cars upon petitioner's said track; and from interfering with or disturbing petitioner in the use, possession and enjoyment of petitioner's said depot and buildings, used for and in connection with petitioner's said railroad; and prohibiting and enjoining said New Orleans, Mobile and Chattanooga Railroad Company from applying to any other court or authority for any writ or order or action in the premises or relating to the subject matter of this petition, or in support of any pretensions said company

may set up to the said two strips of land each of twelve feet in width, and to the said strip of fifty French feet wide, or to interfere with the running of petitioner's said engines and cars upon petitioner's said tracks, or with petitioner's use of its said depot and buildings, and with the exercise of petitioner's privileges and powers; that said New Orleans, Mobile and Chattanooga Railroad Company be duly cited to answer hereto; that after due proceedings petitioner have judg-
413* ment; that said injunction be made perpetual, with costs, and for general relief.

(Signed) LEA, FINNEY & MILLER,
Attorneys.

Affidavit.

J. M. Lapeyre, who, being duly sworn, deposes and says that all the facts and allegations contained in the foregoing petition are true and correct.

(Signed) J. M. LAPEYRE.

Sworn and subscribed before me this twenty-first day of February, 1870.

(Signed) H. J. DUSSOR,
Dy Clerk.

Order.

Let a writ of injunction issue in this case as within prayed for and according to law, upon the petitioner giving bond, with good and solvent security, in the sum of fifty thousand dollars, conditioned as the law directs.

New Orleans, February 21, 1870.

(Signed) T. WHARTON COLLENS, *Judge.*

Bond.—Filed February 21, 1870.

Know all men by these presents that we, the Pontchartrain Railroad Company, as principal, and John M. Lapeyre, as security, of the city of New Orleans, and State of Louisiana, are held and firmly bound unto the New Orleans, Mobile and Chattanooga Railroad Company in the sum of fifty thousand dollars ($50,000), lawful money of the United States of America, to be paid to the said New Orleans, Mobile and Chattanooga Railroad Company, its heirs, executors, administrators, and assigns, for which payment well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, administrators, firmly by these presents. Sealed with our seals, and dated the twenty-first of February, in the year of our Lord one thousand eight hundred and seventy.

Whereas the said Pontchart'ain Railroad Company have this day presented a petition to the honorable the seventh district court for the parish of Orleans praying a writ of injunction:

Now the condition of the above obligation is, that we, the above bound, the Pontchartrain Railroad Company and J. M. Lapeyre, security, will well and truly pay to the said New Orleans, Mobile and Chattanooga Railroad Company, the defendant in said injunction, all

such damages as it may recover against us in case it should be decided that the said injunction was wrongfully obtained.

(Signed) THE PONTCHARTRAIN RAILROAD COMPANY,
By J. M. LAPEYRE, [L. S.]
President.
J. M. LAPEYRE. [L. S.]

Signed, sealed, and delivered in presence of—
(Signed) H. C. MILLER.

414 *Act.—Document A.—Act of sale from Bernard Marigny to Pontchartrain R. R. Co., February* 23, 1870.—*Annexed to petition.—Filed February* 21, 1870.

En la ville de Nouvelle Orléans, dans l'État de la Louisiane, ce vingt-trois février mil huit cent trente, et dans la *un*iquante-quatrième an'ée de l'Indépendence des États-Unis d'Amérique, par devant Felix de Armas, notaire public, dûment commissionné, dans et pour la ville et paroisse de la Nouvelle Orléans, y résident, et en présence des témoins ci-après nommés et soussignés, sont personnellement comparus Mr. Bernard Marigny, propriétaire demeurant en cette ville, d'une part, et Mr. Martin Duralde, aussi demeurant en cette ville, comme présidant de la compagnie du Pontchartrain Railroad, dûment autorisé à l'effet des présentes en vertue d'une résolution des directeurs de la dite compagnie pris dans une assemblée spéciale tenue en cette ville le vingt-deux courant, et dont copie est ci-annexée.

Lequel dit sieur Marigny a declaré céder et transporter, pour les présenter, et sans aucune garantie quelconque, excepté qu'il ni disposé en aucune manière des droits qui sont l'object de la présente cession et transport, tous ses droits, titres et prétentions à la portion de terre connue comme canal Marigny, ayant cinquante pieds (mesure française) de large, plus ou moines, et s'étendant du grand chemin de la levée, avec la même largeur, jusqu'à la limit de l'habitation du juge Martin, qui est celle de l'ancienne habitation Marigny; mais la partie due dit canal qui forme le bas'in qui est en tête du morceau faubourg Marigny a soisante pieds de large sur deux cent quatre-vingts pieds de long, et de la limite de l'habitation du juge Martin la dite portion de terre connue comme canal Marigny a soisante et douze pieds de large, plus ou moins, y compris le canal et le chemin de chaque côté du dit canal qui en dependant jusqu'au bayou St. Jean; le dit sieur Marigny déclares aussi céder à la dite compagnie le droit qu'il a d'avoir le dit canal au fleuve, sur une largeur de cinquante pieds; laquelle portion du terre connue *surs* le nom de canal Marigny est representée en grande partie sur un plan du faubourg Marigny déposé aux archives de conseil de la ville de la Nouvelle Orléans, et daté le vingt et un mai mil huit cent cinq, et aussi en grande partie sur un autre plan comprenant l'ancien et le morceau faubourg Marigny, daté du quatorze septembre mil huit cent neuf, dressé par Joseph Pilié, et qui se trouve en l'étude du notaire soussigné, lesquels plans sont signée par le dit sieur Marigny, et auxquels les parties se réfèrent, le dit canal étant cédé conformément aux dits plans; déclarant le dit sieur Duralde, ès qualités, bien *an*naître la dite portion de terre connue sous le nom de canal Marigny, et la pendre telle qu'elle se poursuit et comporté.

Déclarant le dit sieur Marigny que dès l'année mil huit cent cinq et depuis il a passé divers actes avec la corporation de la Nouvelle Orléans, dans lesquels il est question de ce canal, de son overture au fleuve, du droit d'y faire des ponts de certaines conditions, du droit de jetter la

terre provenant de sa fouille sur les rives du dit canal, et d'autre chauses y contenues; que le dit conseil de ville a passé divers arrêtér et résolutions au sujet du dit canal, desquels actes, arrêtér et résolutions le dit sieur Marigny déclare avoir tousjours en parfaite connaissance et auxquels il s'est soumis; qu'en conséquence il vent et entend que la dite compagnie soit terme de s'y soumettre.

Déclare en outre le dit sieur Marigny qu'il a passé un acte de
415 vente à Mr. Pierre Denis de la Ronde, en date du quinze mai mil huit cent dix-neuf, au raporte de Marc Lafitte, alors notaire en cette ville, et un autre acte de vente à Mr. Nicholas Noel Destrehan, en date du trente et un mil huit cent vingt-six, au rapporte du même notaire Lafitte, de divers terrains et terres fesant face à la promenade ou chemin qui borne le canal.

Déclare aussi le dit sieur Marigny qu'il a écrit une letter en novembre dernier au Représentants de cette État au Congrès au suget d'une proposition d'échange de terre avec le gouvernement général pour le canal Marigny, pour que cet échange ait lieu pendant la session actuelle du Congrès. Le dit sieur Duralde, ès qualité, déclare avoir une parfaite connaissance de tout les actes, arrêtés, déclarations et résolutions du conseil de ville, lettre au membres du Congrès, ventes à Messrs. Destrahan et De la Ronde ci-dessus mentionnés, et de tous droits, avantages, chargés et servitudes qui derrivent de tous différents actes, et d'y soumettre déclarant en autre se mettre au lieu et place du dit sieur Marigny dans tout ce qui est relatif au dit canal.

En conséquence, le dit sieur Duralde, ès qualitér, accepte, au nom de la dite compagnie, la présent cession de droits, pour et *morpennant* la somme de vingt-cinq milles piastres, payables dans les six billets surscrits aujourd'hui par les dit sieur Duralde, ès qualités, chaque billet étant de la somme de quatre mille cent soixante-six piastres soixante-six cents et deux tiers, fait à l'ordre du dit sieur Marigny, payable au domicile de la Banque de l'État de la Louisiane, deux desquels six billets sont payable à un an de date, deux autres à deux ans de date, et les deux autres restant à trois ans de date; lesquels six billets, après avoir été signér, et paraphér ne varietur par le notaire soussigné, ont été ren'us au dit sieur Marigny, qui le reconnait.

Et pour sureté du paiement de tous et chacun des dix six billets à leur échéance respective, ainsi que pour le paiement de tous intérêts éventuels, qui currant au taux de dix pour cent par an, si aucun des dits six billets n'était pas punctuellement payé, bien étendu que cette clause de paiement d'intérêts éventuelle ne devra pas être considerés comme accordant aucun delai, ou de là de l'échéance de chacun de ces billets, car, au contraire, arrivant chaque échéance sans que paiement soit effectué d'aucun billet ainsi échu, le dit Sieur Marigny aura le droit de poursuivre par toutes les voies qui lui sont donnés même par celle de l'exécution parée, le recouvrement de ce qui lui sera du en capital et intérêts. Pour sureté du dit paiement, disons-nous, le dit sieur Martin Duralde, ès qualité, consent qu'inscription des présentes soit priseés au bureau du conservateur des hypothèques en cette ville.

Le dit sieur Marigny déclare le dit canal ainsi cédé fait partie de l'habitation dont le dit sieur Marigny a hérité de son père, et qu'il a évigé en faubourgs.

Au présent acte est intervenue et person'ellement comparue Madame Annette Moreles, épouse du dit sieur Bd. Marigny, de son mari dûment autorisée, laquelle a dit et déclaré que, voulant donner au présent acte de cession toute l'efficacité possible et mettre à jamais la dite compagnie à l'abri de toutes espèces de réclamations

de sa parte relativement aux droits ainsi cédés, elle promet, tant pour elle que pour ses héritiers et ayons-cause, de tenir toujours le présent acte pour bon et valide, et conformément à la troisième partida, titre dix-huit, liv. cinquante-huit, et aux articles cinquante-trois, section deux, et soixante-deux, section trois, pages trois cent trente-trois, trois cent trente-cinq et trois cent trente-sept, du chapitre deux, du titre cinq, du livre trois de l'ancien Code Civil de cet État, et également aux articles deux mille trois cent cinquante-
416 cinq et deux mille trois cent soixante-sept, pages sept cent soixante-cinq et sept cent soixante-neuf, au titre du Contrat de Mariage, du nouveau Code Civil de cet État, et aussi aux articles trois mille cent cinquante-huit et trois mille cent quatre-vingt-deux, pages neuf cent quatre-vingt-neuf et neuf cent quatre-vingt-dix-sept, au titre des Privilèges, de ce dernier Code, lesquels articles et lois le notaire soussigné a dûment expliqué la dite dame Marigny, qui déclare en être suffisament instruite. La dite dame Marigny a renoncé, comme de fait, elle renonce formellement par les présentes, à tous droits d'hypothèque, de privilèges et autres qu'elle a et peut avoir sur les droits ainsi cédés par le dit sieur son mari à la dite compagnie, pour raison de ses conventions, droits et apports matrimoniaux, ou à tous autres titres que ce puisse être, déclarant formellement qu'elle donne, de son plein gré, son consentment à la cession de droits qu'a faite le dite sieur son mari à la dite compagnie du railroad, et que jamais, sous aucun prétext, elle ne réclamera ni exercera aucun privilège, hypothèque ou prétention sur les droits ainsi cédér, en quelques mains qu'ils puissent passer pour raison de ses droits, apports et conventions matrimoniaux, auxquels dits privilèges, hypothèques ou prétentions elle renonce ainsi qu'il est déjà dit, tant pour elle que pour ses héritiers et ayons-cause, dès ce moment et à toujours, en tant qu'il pouvaient porter sur les dit droits ainsi cédés voulant que les dits droits en soient pour toujours libres en affranchis.

D'après le certificat du conservateur des hypothèques en cette ville à la date de ce jour, ci-annexé, il resulte qu'il n'y a aucune hypothèque insente contre le dit sieur Marigny sur la surdite portion de terre connue canal Marigny, à l'exception de celle en faveur de Madame Marigny resultant d'une acte du vingt-deux octobre mil huit cent vingt-sept, au rapport de Louis T. Caire, notaire en cette ville, portant quittance par les sieur et dame Marigny, en faveur de dame Félicité Boidoré, veuve Gilbert Guillemard, et du sieur Armand Guillemard, son fils, de la somme de deux mille piastres, appartenant à la dite dame Marigny, dans la forme du dit acte, à laquelle hypothèque la dite dame Marigny autorisée que dit est a déclaré renoncer ainsi qu'à toutes autres et ce aux terms du présent acte.

Fait et passé à la Nouvelle Orléans, en l'étude, les jour, mois et an surdits, en présence de Messrs. Felix Percy et Jules Mossy, témoins competents, qui ont signé avec les comparants et le notaire, après lecture faite.

(La minute est signée :)

BERNARD MARIGNY.
MORALES MARIGNY.
M. DURALDE,
President of the Pontchartrain Railroad Company.

FELIX PERCY.
J. MOSSY.

FELIX DE ARMAS,
Not. Pub.

Je, soussigné, Florian Malus, notaire public en la ville de la Nouvelle Orléans, dûment commissioné et assermenté, agissant ici pour John Claiborne, aussi notaire public, et dépositaire des archives de feu Felix de Armas, ci-devant notaire en cette ville, certifie que ce que précède est une copie fidèle de la minute vertée aux archives du dit feu Felix de Armas, notaire.

417 En foi de quoi j'ai ici apposé ma signature et *de* scea*n* de mon office, à la Nouvelle Orléans, ce dix-septième jour d'avril mil huit cent cinquante-trois.

[L. S.] (Signed) FLORIAN MALUS,
Not. Pub.

Writ of injunction.

State of Louisiana, seventh district court for the parish of Orleans.

THE PONTCHARTRAIN R. R. Co. *vs.* N. O., M. AND C. R. R. Co. } No. 2757.

The State of Louisiana to the New Orleans, Mobile and Chattanooga Railroad Company, its officers and agents, greeting:

You are hereby commanded, enjoined, and prohibited, in the name of the State of Louisiana and of the seventh district court for the parish of Orleans, from interfering with or disturbing the Pontchartrain Railroad Company in the use, possession, and enjoyment of the following-described property, to wit:

First. Two certain strips of land, each twelve feet in width, one upon each side of and adjoining the certain strip of land in the central portion of Elysian Fields street, running fifty French feet wide, extending from the river Mississippi to the elbow of canal Marigny, which fifty feet were acquired by said Pontchartrain Railroad Company from Bernard Marigny by act before F. de Armas, notary, of date the 23d of February, 1830.

Second. Said strip of land of fifty feet wide, acquired from B. Marigny, as aforesaid.

And you are further prohibited and enjoined from locating and constructing tracks of the New Orleans, Mobile and Chattanooga Railroad Company along and upon said two strips of twelve feet in width each, or along and upon said strip of fifty feet wide, said two strips extending the length of said strip of fifty feet, and from interfering with or disturbing in any manner the running of the engines and cars of the Pontchartrain Railroad Company upon their tracks, and from interfering with or disturbing said Pontchartrain Railroad Company in the use, possession, and enjoyment of its depot and buildings used for and in connection with its railroad; and you are further prohibited and enjoined from applying to any other court or authority in the premises, or relating to the subject-matter hereof, or in support of any pretensions you may set up to said strips of land, or to interfere with the said Pontchartrain Railroad Company in the running of its engines and cars, or with its use, possession, and enjoyment of its depot and buildings.

And you are so enjoined and prohibited until the further order of this honorable court.

Witness the honorable Thomas Wharton Collens, judge of our said court, this twenty-first day of February, in the year of our Lord one

thousand eight hundred and seventy, and in the ninety-fourth year of the Independence of the United States.

[SEAL.] (Signed) A. D. BERNOUDY, *Clerk.*

418 *Sheriff's return.*

Received, February 21, 1870, at fifteen minutes before two o'clock p. m., and on the same day at five minutes past two o'clock p. m. I served a copy of the within writ of injunction on the New Orleans, Mobile and Chattanooga Railroad Company, defendant herein, by leaving the same at the office of said company, in the building known as Gallier's Court, near the corner of Carondelet and Common streets, in the hands of R. F. Harrison, a person apparently over the age of fourteen years, and in the employ of said company, in said office, as bookkeeper, whose name and other facts connected with this service I learned by interrogating him, the president and treasurer of said company being absent from the aforesaid office at the time of said service.

Returned same day.

(Signed) W. WALSH,
Dy Sheriff.

Citation.—Issued March 5, 1870.

State of Louisiana, seventh district court for the parish of Orleans, in the city of New Orleans.

THE PONTCHARTRAIN R. R. CO.
vs.
N. O., M. AND C. R. R. CO. } No. 2757.

The Pontchartrain Railroad Company, through its president:

You are hereby summoned to comply with the demand contained in the answer and reconvention, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the seventh district court for the parish of Orleans, on Chartres street, between St. Ann and St. Anthony alley, in ten days after the service hereof.

Witness the honorable Thomas Wharton Collens, judge of said court, the 5th day of March, in the year of our Lord 1870.

[SEAL.] (Signed) GUS. BERNOUDY,
Dy Clerk.

Sheriff's return.

Received March 5, 1870, and on the seventh day of the same month and year served copy of the within citation and accompanying answer and reconvention on the Pontchartrain Railroad Company, plaintiff herein, by leaving the same at the office of said company, corner of Delta and Lafayette streets, in the hands of W. J. Carter, its secretary, who informed me that the president was absent from the office at the time of said service.

(Signed) PH. LACOSTE,
Dy Sheriff.

419 *Answer and reconventional demand.—Filed March 3, 1870.*

THE PONTCHARTRAIN R. R. CO.
vs.
N. O., M. AND C. R. CO. } No. 2757.

Seventh district court, parish of Orleans.

The answer of the New Orleans, Mobile and Chattanooga Railroad Company to the petition of the plaintiff in this cause.

The defendants deny all and singular the allegations of the petition, except such as hereinafter admitted:

First. The defendants admit that by several acts of the legislature the plaintiffs have been incorporated, and that their rights, privileges, duties, and responsibilities appear therefrom, and to which reference is craved for evidence thereof.

Second. The defendants admit that the said plaintiffs have purchased property by public acts in their favor, and they pray over of acts under which they claim, and that they may be filed.

Third. They admit that an ordinance was passed in the year 1830, by the city council of New Orleans, and they pray reference to the same as a part of this answer, for its precise term.

Fourth. The defendants deny the conclusions that the plaintiffs have drawn as to the effect and operation of these several acts, and that they confer any indefeasible or other permanent interest in the property hereafter particularly described.

But, on the contrary, they aver that the permission or leave granted to the said plaintiffs, if the same can authorize their acts at all, *and* was revocable by the corporate authorities, and are subject to the paramount control of the State, speaking by its legislative authority.

Fifth. The defendants deny that the said plaintiffs have used the same for the time or in the manner set forth in the petition.

Sixth. These defendants deny that there was any threat or act of the defendants to interfere with the plaintiffs unless under competent and valid authority from the State, and which authority the legislature was competent to grant.

Seventh. And these defendants aver that the legislature, by an act passed and approved the 21st February, 1870, did authorize said defendants to locate, construct, maintain and use, for the passage of their engines and cars, the tracks of its railroad (with the requisite curves to and for the same) from the levee to the line designated in the ordinances of the city of New Orleans for the extension of Claiborne street along and upon the portions of Elysian Fields street, and intervening streets, originally designed for the two central banquett's or walks in Elysian Fields street, the said banquettes being the strips of ground twelve feet in width, one upon each side of and adjoining the land said to be owned by the Pontchartrain Railroad Company, in the central portion of said street. And the legislature further enacted that no ordinance heretofore passed, or which may hereafter be passed by the city of New Orleans, and no act of any party or parties whomsoever, and no act of any court or judge heretofore done, or which may here-

420 after be done, shall be of any force or validity to prevent the location, construction, maintenance and use of the said tracks aforesaid, and that the land thus described is that described in the petition.

And the said company (defendants herein) were thereby authorized and empowered, without further authority than is given by the said act, to remove from the said banquettes any material or structure which it may deem necessary to remove, in order to construct their said tracks as aforesaid.

All of which will more fully appear by the act of the legislature aforesaid, entitled "An act relative to the New Orleans, Mobile and Chattanooga Railroad Company, and to regulate judicial proceedings in certain cases under the charter of the said company and the laws of this State relative thereto heretofore passed, and to declare and define the powers and liabilities of the said company, and to facilitate and aid the said company, and to facilitate and aid by grant of lands the construction, and secure the maintenance of the railroad of the said company within the State of Louisiana, and to appropriate certain lands in the city of New Orleans for public use, and to provide for the building of one or more branches to the main line of said railroad, approved 21st February, 1870." to which these defendants crave reference.

Eighth. These defendants aver that the said act contains a full and complete answer to all the claims of the said plaintiffs, and is a bar to any proceeding in this court for the obstruction of these defendants, and that this honorable court ought not to entertain the suit of the said plaintiffs to hinder, obstruct, or delay the defendants in the exercise of the authority and power thus conferred by the legislative power to appropriate the property described in the petition.

Ninth. These defendants further aver that the act aforesaid effectually repeals any permission or license granted by the said city council, provided it had any power to confer the same, which they do not admit.

Tenth. These defendants in reconvention assert that they have already sustained damages to the extent of fifty thousand dollars, and that if they be hindered and delayed the damage will be aggravated, and they claim damages for five hundred thousand dollars for the eventual damages in the injunction thus wrongfully sued out, and which they aver was designed of purpose to deny and defeat the said enactment.

The defendants pray that the plaintiffs be ordered and required to remove their works, and be enjoined from any interference with the defendants in the enforcement of their rights.

These defendants pray for the dismis'al of the injunction against them, and of this suit wrongfully commenced, and that they be paid their costs and expenses, and have general relief.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
For Defendants.

421 *Citation.—Issued February* 20, 1870.

State of Louisiana, seventh district court, for the parish of Orleans, in the city of New Orleans.

THE PONTCHARTRAIN R. R. CO. *vs.* N. O., M. AND C. R. R. CO. } No. 2757.

The New Orleans, Mobile and Chattanooga Railroad Company, through its proper officer:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your

answer to the same in the office of the clerk of the seventh district court for the parish of Orleans, on Chartres street, between St. Ann and St. Anthony alley, in ten days after the service hereof.

Witness the honorable Thomas Wharton Collens, judge of the said court, the 21st day of February, in the year of our Lord, 1870.

[SEAL.] (Signed) H. J. DUSSOR, *Dy Clerk.*

Sheriff's return.

Received, February 23, 1870, and on the twenty-fourth day of the same month and year, served copy of the within citation and accompanying petition, on the New Orleans, Mobile and Chattanooga Railroad Company, defendant herein, by leaving the same at the office of said company, room No. 7, upstairs, Gallier's court, corner of Carondelet and Common streets, in the hands of H. Van Vleck, the chief engineer of said company, who informed me that the president and the secretary were both absent from the office at the time of said service.

Returned same day.

(Signed) PH. LACOSTE, *Dy Sheriff.*

Motion to set aside injunction.—Filed March 3, 1870.

THE PONTCHARTRAIN R. R. Co. } No. 2757.
vs.
N. O., M. AND C. R. R. Co. }

Seventh district court, parish of Orleans.

On motion of Campbell, Spofford & Campbell, of counsel for the New Orleans, Mobile and Chattanooga Railroad Company—

It is ordered by the court that the plaintiffs (the Pontchartrain Railroad Company) do show cause, on Tuesday, 8th March, 1870, at 10 a. m., why the injunction heretofore issued should not be dissolved:

1. Because the same is not warranted by the facts disclosed in the petition, and their presentment of title.

2. Because the same is contrary to the act of the legislature of Louisiana, approved 21st February, 1870, described in the answer, and set forth (in part) in the same, and which they will submit in full.

3. Because the defendants have a right under said act to enter
422 upon the said property described by the said act, free from obstruction, as will appear from the same.

4. They pray of the court to grant an order of injunction upon the plaintiffs to and any opposition to the execution of the said act pursuant to their prayer in reconvention upon such terms as the court deems reasonable.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
For Defendants.

Sheriff's return.

Received, March 4, 1870, and on the fifth day of the same month and year served a copy of the within rule on plaintiff herein, by a personal service on H. C. Miller, esq., a member of the law firm of Lea, Finney & Miller, their attorneys.

Returned same day.

(Signed) J. W. T. LEECH, *Dy Sheriff.*

Rule continued.—Extract from the minutes, Tuesday, March 8, 1870.

THE PONTCHARTRAIN R. R. Co. vs. N. O., M. AND C. R. R. Co. } No. 2757.

By consent of counsel, it is ordered that the rule herein be continued, and it is further ordered that the same be fixed for trial on Tuesday next, at 10 a. m.

Supplemental answer and order.—Filed March 8, 1870.

THE PONTCHARTRAIN R. R. Co. vs. N. O., M. AND C. R. R. Co. } No. 2757.

Seventh district court, parish of Orleans.

Wm. S. Williams, treasurer of the New Orleans, Mobile and Chattanooga Railroad Company, domiciled in New Orleans, makes oath and says that the answer on file in the cause of the above title is true, to the best of his knowledge, information, and belief, and that the map marked A, herewith filed, he believes to be a fair representation of the property in controversy within the limits mentioned in said map.

(Signed) W. S. WILLIAMS.

Sworn to and subscribed before me in open court.
March 8, 1870.
(Signed) GASP'D JAMES, *D'y Clerk.*

Order.

Let this supplemental answer be filed.
New Orleans, 8th March, 1870.
(Signed) T. WHARTON COLLENS, *Judge.*

423 *Rule continued.—Extract from the minutes, Tuesday, March 15, 1870.*

THE PONTCHARTRAIN R. R. Co. vs. N. O., M. AND C. R. R. Co. } No. 2757.

The rule herein taken on the 3d instant by defendants on plaintiffs, came on this day for trial.

Campbell for plaintiffs in rule.

Finney & Miller for defendants therein.

When, after hearing pleadings and argument of counsel, and the rule hour expiring—

It is ordered that the rule be continued to Wednesday next at 5 o'clock, p. m.

Rule continued.—Extract from the minutes, Wednesday, March 16, 1870.

THE PONTCHARTRAIN R. R. Co. vs. N. O., M. AND C. R. R. Co. } No. 2757.

The rule to set aside the injunction herein issued came on again this day.

Counsel engaged present.

After hearing additional argument, it is ordered that the rule be continued to Saturday next at 5 o'clock, p. m.

Rule continued.—Extract from the minutes, Saturday, March 19, 1870.

THE PONTCHARTRAIN R. R. Co. *vs.* N. O., M. AND C. R. R. Co. } No. 2757.

On motion of H. C. Miller, esq., one of the counsel for plaintiffs, and on suggesting consent of counsel for both parties, it is ordered that the rule herein taken be continued to Monday next, at 5 o'clock p. m.

Rule submitted.—Extract from the minutes, Monday, March 21, 1870.

THE PONTCHARTRAIN R. R. Co. *vs.* N. O., M. AND C. R. R. Co. } No. 2757.

This day, after hearing further argument of counsel for both parties, the rule to set aside the injunction herein was submitted, and taken under consideration.

Order and continuance.—Extract from minutes of Thursday, April 28, 1870.

THE PONTCHARTRAIN R. R. Co. *vs.* N. O., M. AND C. R. R. Co. } No. 2757.

This cause was called to-day for trial, and passed, Mr. Finney, attorney for plaintiff, suggesting a prospect of an amicable settlement.

424 *Reasons for refusing to try case.—Filed May* 18, 1870.

Seventh district court.

THE PONTCHARTRAIN R. R. Co. *vs.* N. O., M. AND C. R. R. Co.

Since the issuing of the injunction in this case, the defendants have obtained from the eighth district court another injunction, enabling them to do acts they were by this court forbidden to commit.

Pains have been taken to bring this counter-process of the eighth district court to the notice of this court, as will be seen by the paper put on file to-day.

The eighth district court claims exclusive jurisdiction of cases in the nature of the present one, and there is reason to apprehend that should this court assert concurrent jurisdiction a conflict would arise.

In that event the sheriff and the parties would find themselves buffeted between contrary writs, and obliged, at their peril, to decide aright which to obey; and even a correct and lawful choice would not protect them for the time being against inprisonments and fines for contempts for doing what one judge permits, while the other forbids.

A war of writs of imprisonment, and of habeas corpus would doubtless arise, and the parties and officers would find themselves ground between the upper and the nether stone.

Such a contest could only destroy the confidence the people should have, that in obeying the process of courts they will be protected, and that they cannot resist process without incurring a merited penalty. It would destroy the authority and dignity of the judiciary, and bring it, by its own act, into ridicule and contempt.

Even on the merits, if I were to perpetuate the injunction issued from this court, and the judge of the eighth were to perpetuate the one he has allowed, then two contrary judgments, from which the parties, respectively, might not choose to appeal, would exist, so that even on execution the question of rightful jurisdiction rationæ materiæ would arrise again, and so on interminably, producing the same distracting chaos and disparaging contention.

I regard it as a duty I owe to the State and to the high character of the judicial functions I am entrusted with, not to give rise to such collisions, such uncertainty and confusion, or such dishonor of judicial authority; and, therefore, before deciding the rule tried and submitted to me in this case, I will await the order of the supreme court. That tribunal alone can settle this difficulty between two equal tribunals.

Hence, considering the case of "The Mobile and Chattanooga Railroad Company vs. City of New Orleans and others," now pending in the eighth district court, and the act of the legislature creating said court, I refuse to decide the issues already tried herein, or to hear, try, or decide this case on the merits, or to allow any further proceedings therein.

425 *Document Z.—Writ of injunction from eighth district court.—Filed May* 18, 1870.

State of Louisiana, eighth district court for the parish of Orleans.

N. O., M. AND CHAT. R. R. CO. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

To the City of New Orleans et als., greeting:

You are hereby commanded, enjoined, and restrained in the name of the State of Louisiana, and the eighth district court for the parish of Orleans, from obstructing, hindering or in any way interfering with the laying of the tracks of the New Orleans, Mobile and Chattanooga Railroad Company upon ground specified in the maps of survey now on file in this office, and the spaces of ground mentioned in the first section of the act of the twenty-first February, 1870, of the general assembly of the State of Louisiana, being the central banquettes or walking avenues which line the space of ground reserved by Mr. Bernard Marigny, being two strips of ground twelve feet in width, one upon each side of and adjoining the land said to be owned by the Pontchartrain Railroad Company, in the central portion of Elysian Fields street, with the requisite curves to and from the same—from the levee and from Claiborne street. And you are also restrained from hindering and obstructing the removal of any structure or material thereon that may in any manner obstruct, hinder or impair the location of tracks, maintenance, construction, and use of the New Orleans, Mobile and Chattanooga Railroad Company.

And you are so enjoined until the further order of this honorable court.

Witness the honorable Henry C. Dibble, judge of our said court, this second day of May, in the year of our Lord one thousand eight hundred and seventy, and in the ninety-fourth year of the Independence of the United States.

[SEAL.] (Signed) JAMES D. HOUSTON,
Dy Clerk.

A true copy.
(Signed) J. D. TAYLOR, *Dy Clerk.*

Motion to transfer case to eighth district court.—Filed June 2, 1870.

THE PONTCHARTRAIN R. R. Co.
vs.
N. O., M. AND C. R. R. Co. } No. 2757.

On motion of Lea, Finney & Miller, of counsel for plaintiff, it is ordered that this case be transferred to the eighth district court for the parish of Orleans.

426 *Note of evidence and agreement.—Filed June 25, 1870.*

Eighth district court for the parish of Orleans.

THE PONTCHARTRAIN R. R. Co.
vs.
N. O., M. AND C. R. R. Co. } No. 116.

This case is submitted upon the pleadings and the following evidence:

Evidence for plaintiff.

1. The charter of the plaintiff's company, and the various acts amendatory thereof, which are not to be copied in the transcript of appeal, and may be read from the printed volumes of the statutes.

2. Ordinances of the council of the city approved by the mayor March 15th, 1830, concerning the right of way of Pontchartrain Railroad Company on Elysian Fields street, filed in evidence in suit No. 19 of the docket of this court, a translation of which may be found in the printed digest of the city laws published in 1831, by Jerome Bayon; copy in No. 19 to be copied in the transcript of appeal, and the translation to be read from the books.

3. All the oral testimony and maps and plans offered in evidence on the trial of the motion to dissolve the injunction, made by the Pontchartrain Railroad Company, in suit No. 19 on the docket of this (eighth district) court.

4. All the evidence introduced in the case of Bernard Marigny vs. The Pontchartrain Railroad Company, No. 6365 on the docket of the supreme court, except a book which appears to have been offered in evidence in said cause, and to have disappeared from the archives of the court.

For greater clearness, documents A, B, C, D and Nos. 1, 2, 3, 4, 5, 6, 7, 8 in said record are specially mentioned as being in evidence. And where any paper or document has been offered twice in evidence, the clerk will only copy it once in the transcript of appeal.

5. An act of the legislative council of the Territory of Orleans, approved April 19, 1805, entitled "An act to enable the guardian of Bernard Marigny to make the conveyance therein mentioned," which act need not be copied in the transcript of appeal, but may be read from the printed volume of the acts of the first session of the legislature. (See p. 354.)

6. Act of deposit by Bernard Marigny 21st November, 1818, in office of P. Pedesclaux, notary, marked "Act of Deposit Y."

7. Plans marked "Plan B," "Plan C."

Evidence for defendants.

1. The defendants offer in evidence the acts of incorporation of the company and the act relative to the company, as is set forth in their answer, approved 21st February, 1870. These to be read from the statutes, and are to be regarded as public acts, so far as evidence is concerned; and that these acts have been accepted by defendants, as required by law.

2. They offer the map of the Marigny suburb, in so far as applicable to their property, as an accurate copy, made by Pilié, surveyor;
427 and that the property was sold on the streets laid down there by the proprietor before 1820.

3. They offer the map filed herewith as a correct delineation of the survey and location of their road in connection with the property described in the petition and answer, and support the same by the testimony of H. Van Vleck, the engineer of the road, M. Doriscourt, deputy city surveyor, and Wm. H. Bell, the city surveyor, who were employed to make the same and measure the spaces on the ground, and who testify to its accuracy and completeness. These maps were filed with the city and State. It is admitted that the witnesses will testify to the map as stated, and their production is dispensed.

4. Any act of the legislature or ordinance of the city council applicable to the subject may be referred to, and read without further reference or proof.

(Signed) LEA, FINNEY & MILLER,
" CAMPBELL, SPOFFORD & CAMPBELL,
For Defendants.

Agreement.

We respectively agree that this cause be submitted on briefs to the judge of the eighth district court, and that judgment be rendered therein either at this term or during the next term, as may suit his convenience; and that either may appeal from the judgment of the court in the premises by suspensive appeal, within thirty days from the signature of the judgment of the court. No proceedings to be taken in any other suit between these parties till the first Monday of December next. The plans and maps may be carried up from the files without being copied.

(Signed) LEA, FINNEY & MILLER,
" CAMPBELL, SPOFFORD & CAMPBELL,
For Defendants.

Extract from record No. 6365.—Supreme court.—Filed June 28, 1870.

Supreme court of the State of Louisiana.

BERNARD MARIGNY
versus.
THE PONTCHARTRAIN RAILROAD COMPANY. } No. 6365.

Appeal from the fifth district court of New Orleans.

Document B, offered in evidence.—Filed April 29, 1859.

BERNARD MARIGNY
vs.
THE PONTCHARTRAIN R. R. CO. } No. 9777.

17 juin 1805.—Acte entre la ville et Mr. B. Marigny.

Aujourd'hui, dix-sept juin mil huit cent cinq, et la vingt-neuvième année de l'Indépendance des États-Unis de l'Amérique du Nord,
428 entre nous, soussignés, Bernard de Marigny, propriétaire de l'habitation Cordant, au nord-est les limites de la ville, mineur d'âge, dûment assisté de Monsieur Salomon Prévost, son curateur, et l'également autorisés par ordonnance de la cour supérieure du Territoire d'Orléans en date du 25 mai dernier, rendue sur leur requête du 22 même mois, et dont l'original restera annexé du présent acte, d'une part, et Jacques Pitot, maire de la ville et canlieue de la Nouvelle Orleans, dûment autorisé à l'effet du présent par l'arrêté du conseil de ville du 18 mai dernier, dont l'expédition en forme restera aussi annexé au présent acte, d'autre part, aux termes tant de l'acte du conseil législatif du 19 avril dernier, dont copie ci-annexée, qui autorise la division de l'habitation du sieur Bernard de Marigny en faubourg, que de l'arrêté du conseil de ville ci-dessus relaté et plan figuratif de la dite division fait par M. N. Definiels, le 21 du dit mois, approuvé par le sieur de Marigny, et annexé aussi au présent acte, pour servir d'archives incontestables, a été convenu ce qui suit, savoir:

M. Bernard de Marigny, dûment assisté que dit est, déclare que, se soumettant absolument à l'acte du conseil législatif mentionné à dessus, qui ordonne de s'entendre avec le conseil de ville, pour l'établissement de son habitation en faubourg, et confirmé à perpétuité pour lui, ses héritiers et ayant-cause, en faveur de la corporation de la Nouvelle Orléans, les offres, avantages, abandon ou donations mentionnés dans le susdit arrêté du conseil de ville, comme suit:

1. Il reconnaît donner, céder, quitter et de laisser en toute propriété, comme il est dit ci-dessus, à la corporation de la Nouvelle Orléans, douze terrains, formant une isle entière pour place publique du dit faubourg, distinguée sur le dit plan par ces mots, "place publique," et par une différence de couleur.

2. Il reconnaît faire une pareille cession de propriété incontestable en faveur de la même corporation d'une autre isle, distinguée au dit plan par ces mots, "emplacement de l'hôpital," et située à l'extrémité sur la rive gauche du canal, pour l'établissement du dit hôpital.

3. Il reconnaît de plus encore faire une pareille cession de propriété, toujours en faveur de la même corporation, de cinquante pieds de terrain dans toute la profondeur du dit faubourg, sur chaque rive de son canal tel qu'il est tracé sur le plan, pour y pratiquer des rues et prom-

enade publique, ayant aussi porté à cinquante pieds sur le dit plan, la largeur du susdit canal, dans l'intention où il est de l'ouvrir jusqu'à cette largeur, s'il le juge à propos, se réservant de pouvoir jeter alors ses terres à droite et à gauche sur les rives qu'il cède à la corporation.

4. Et, enfin, il reconnaît faire une pareille cession et pareil abandon de propriété en faveur de la dite corporation, pour l'utilité du commerce, de l'alluvion ou batture qui se trouve au delà de la levée du chenim bordant le fleuve dans toute la longueur du dit faubourg.

Et le sieur Jacques Pitot, maire de la ville, autorisé et agissant comme dessus, déclare accepter pour la dite corporation, comme de fait il accepte toutes les cessions, donations et abandon des propriétés ci-dessus mentionnées en sa faveur: et en conformité avec l'acte du corps législatif du 19 avril dernier, il confirme, en sa susdite qualité, et pour le bien qui en résulte pour ses constituans, l'arrêté du conseil de ville en date du 18 mai suivant, autorisant M. Bernard de Marigny à faire par qui de droit toutes divisions et abornemens conformément au plan et au présent acte.

Et Monsieur Salomon Prévost, enfin, aux susdites qualités de curateur, dûment autorisé, déclare avoir pris parfaite et entière connaissance de toutes les transactions ou actes relatés du présent, entre la corporation de la Nouvelle Orléans et son pupille, et en approuver avec lui, conjointement et irrévocablement, toute les clauses.

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Et mon dit sieur Pitot, ès qualités, et autorisé comme dessus par la corporation de cette ville, déclare de plus, au nom de la dite corporation, reconnaître et confirmer pleinment et irrévocablement la limite entre la ville et le faubourg, projeté telle qu'elle est indignée sur le plan par la ligne B C, conservant au dit sieur de Marigny l'ouverture de son canal telle aussi qu'elle existe au susdit plan, sauf sa résponsabilité envers qui de droit quant à l'entretien du dit canal, et aux dommages.

En foi de quoi nous, dits sieurs Bernard de Marigny, Salomon Prévost et Jacques Pitot, conjointement et en présence des témoins soussignés, avons signé et scellé le présent pour qu'il dit sa pleine et entière exécution.

Fait et passé en l'hôtel de ville de la Nouvelle Orléans, les même jours, mois et an que dessus.

(Signé) BERNARD MARIGNY.
SALOMON PRÉVOST.
JACQUES PITOT, *Maire.*

Et en marge:
I. CHABAUD,
et TH. DURAFORD,
Témoins.

Pour expédition conforme à la minute déposée aux archives du conseil de ville.

(Signé) BOURGEOIS, *Sec. Gr.*

CITÉ DE LA NOUVELLE ORLÉANS:

Jacques Pitot, maire de la ville de la Nouvelle Orléans, dans le Territoire d'Orléans, certifie, déclare et fait savoir à tous ceux qu'il appartiendra, ou qui ces présentes verront, que la copie qui précède est conformé à l'acte original passé entre M. Bernard Marigny et la corporation de la dite cité, duquel le dépôt a été fait aux archives; que le sieur Bourgeois qui a signé la dite copie est secrétaire greffier du conseil de la dite cité, et qu'en cette qualité foi doit être ajoutée à sa signature.

En foi de quoi j'ai signé le présent et fait apposer à contre le sceau de la maire de la dite cité, le 19 juin 1805.

[L. S.] (Signé) JS. PITOT, *Maire.*

Document C.—Offered in evidence.—Filed April 29, 1859.

Arrêté du conseil de ville, séance du 18 mai 1805.

Par un acte du conseil législatif en date du 19 avril dernier, Mr. Bernard Marigny ayant été autorisé à établir un faubourg sur le terrain occupé par son habitation, à charge par lui d'en référer au conseil de ville avant de commencer cette entreprise, le dit sieur Marigny a fait part de ses intentions au conseil; mais quelques contestations s'étant élevées sur les limites, il a été nommé, en la séance du 13 avril dernier, un comité pour prendre cet objet en considération, et dans son rapport de ce jour il dit que d'après ses recherches et les documens qu'il a *per* se procurer, il n'est pas d'opinion que la ville sort fondée à contester au dit sieur Marigny la limite déterminée par le gouvernement espagnol, et il se fonde sur les raisons suivantes:

1. On avait, disent les membres du comité, toujours ignoré, depuis la cession de cette colonie à l'Espagne par la France jusqu'où s'étendaient, les terres du Roi vers celles de l'habitation Dubreuil, et d'après un plan de Mr. L. Ingemein de Verges en date du 2 février 1760, on pensait qu'elles n'allaient pas à plus de vingt toises en partant des derniers islets de la ville. Dans l'hypotèse que les terres des anciennes fortifications appartenaient à la dite habitation Dubreuil, le gouvernement et la ville autorisérent Mr. Maxent, devenu propriétaire de cette habitation, à prendre possession des dites terres occupées jusque la par des fortifications devenues alors inutiles. M. de Carondelet les ayant rétablies, et M. de Sigur, alors acquéreur et possesseur de ces terres sur le gouvernement de M. de Gayoso, ayant élevé des réclamations, il fut découvert dans l'acte d'adjudication de l'habitation Dubreuil, en date du 18 décembre 1758, une déclaration de M. de Villars insuérée dans de dit acte, par laquelle il annonce que le Roi a un juste droit de propriété sur deux arpens douze toises, sur lesquelles l'usufruitier a eu permission d'établir quelques édifices, et dont la jouissance lui était accordée jusqu'à ce que le gouvernement en eût besoin; mais comme M. de Villars n'indiquait pas le point d'où il fallait partir pour les mesures, le gouvernement ordonna, pour prévenir toutes difficultés, que les susdits deux arpens douze toises se compteraient de l'angle des casernes, ce qui a été exécuté, ainsi que l'attestent MM. Ch. Trudeau, arpenteur major, de General Gibbert Geullermard, place fois, reano comm're nommé par la ville, et, enfin, M. le marquis de Casa Calvo, comm're de S. M. C. pour la remise de la Louisiane.

2. Il existe une demande faite par M. le baron de Carondelet, et octroyée par le Roi, en date du 21 décembre 1797, pour que la ville puisse disposer des terres qui sont hors des fortifications jusqu'à la distance des trois cents toises; bien entendu celles qui ne se trouveraient pas avoir été accordées à cette époque. Par des renseigneurens que la comité a reçu de M. de Castanedo, ancien regidor et trésorier de la ville, cette cédule royale est parvenue sous le gouvernement de M. de Gayoso, et se trouve enrégistrée dans les livres du Cabildo; si elle lui accordait en même temps des droits de disposer des terres des fortifications lorsqu'elles ne seraient plus utiles c'était sans contredit le moment d'en faire usage pour constater toutes les terres appartenant à la ville, et

les distinguer de celles des voisins par des bornes bien établies et désignées sur le plan général qui en aurait été leisée. De cette manière la ville se serait trouvée en possession d'un titre que le cabildo n'aurait pas manqué de faire valoir pour s'opposer à l'établissement de la limite mentionnée, s'il la croyait préjudiciable à la ville; mais bien loin de prendre ces mesures et d'élever la plus légére contestation, il semble au contraire, s'être prêté à l'établissement de limites, en nommant des commissaires pour assister à cette opération, ce qu'il n'aurait pas fait, s'il se fût cru fondé à y mettre empêchement.

3. Comme rien n'annonce l'existence d'un acte formel de la ville contenant oposition légale contre cette opération, et comme les gouverneurs de S. M. C. ont été révêtus de tous pouvoirs de concéder et de transiger en son nom, il semble que le conseil ne serait pas fondé à solliciter un effet rétroactif, quand bien même la ville aurait été lésée, et avec d'autant moins de raison que dans l'ordre transmis par le Roi à ses commissaires pour la remise de cette colonie à la France, en date du 15 octobre 1802, il confirme toutes les concessions et propriétés accordées par ses gouverneurs, de quelqu'espèce qu'elles soient, encore qu'elles n'aient pas été approuvées antérieuresment par lui. On sent combien il est intérssant pour la garantie des propriétés territorials de ce pays de ne point agir contre cette généreuse et bien faisante
431 détermination, en ce que ce serait frayer une route à des contestations perpétuelles et ruineuses pour les propriétaires qui seraient et dépourvus de titres en forme, et c'est le cas où se trouve le plus grand nombre.

4. Outre ces considérations, le comité pense que l'avantage offert au public par le dit sieur Marigny en établissant sa terre en faubourg est un motif assez puissant pour ne point apporter de difficultés à reconnaître la limite qui a été tracée par ordre de M. le gouverneur Manuel de Gayoso de Lemos. Ces avantages consistent dans la cession à la ville de douze terrains, formant une isle entière, pour une place publique; dans le cession d'une seconde isle pour l'établissement d'une hôpital; dans celle de cinquante pieds sur chaque rive de son canal dans toute la profondeur du dits faubourg pour y pratiquer un chemin et une promenade publique; et, en outre, dans l'abandon de toutes les terre hors de sa levée sur la face de son habitation pour l'utilité au commerce, ainsi qu'il appert par le plan qui sera présenté au conseil par le dit sieur Marigny et soumis à son approbation, sauf les observations qu'il croira convenable de faire à ce sujet.

Le conseil approuve ce rapport à l'unanimité, et arrêté que M. Bernard Marigny sera tenu de souscrire un acte authentique et révêtu des formalités necessaires dans lequel il confirmera les cessions ci-dessus mentionnées faites par lui à la ville et à perpétuité; et que le plan qu'il a fourni restera annexé au dit acte pour être, l'un et l'autre, déposés aux archives du conseil de ville.

(Signé) JOHN WATKINS, *Président.*

Par le président:

(Signé) BOURGEOIS, *Sre. Gr.*

Approuvé.

(Signé) JOS. PITOT, *Maire.*

Pour expédition conforme.

(Signé) BOURGEOIS, *S'ere Gr.*

CITÉ DE LA NOUVELLE ORLÉANS:

Jacques Pitot, maire de la ville de la Nouvelle Orléans, dans le Territoire d'Orléans, certifie, déclare et fait savoir à tous ceux qu'il appartiendra, ou qui ces présentes verront, que la copie qui précède est conformé *e* l'arrêté du conseil, auquel il est référé dans l'acte passé entre M. Bernard Marigny et la corporation de la dite cité; que le sieur Bourgeois, qui a signé la dite copie, est secrétaire greffier du dit conseil, et qui en cette qualité foi doit être ajoutée à sa signature.

En foi de quoi j'ai signé le présent et fait apposer ci-contre le sceau de la maire de la dite cité, ce dix-neuf juin 1805.

[L. S.] (Signé) JS. PITOT, *Maire.*

Document D.—Offered in evidence.—Filed April 29, 1859.

Copie *l'artitule* du plan directeur du faubourg Marigny, deposé aux archives du conseil de ville de la Nouvelle Orléans.

Plan et projet du faubourg de M. Bernard Marigny.

NOTA.—1. La limite du faubourg avec la ville reconnue d'après le plan est A B C.

2. Le canal représente cinquante pieds dans sa largeur depuis le fleuve jusqu'au bayou St. Jean.

3. Les rues et promenades de chaque côté du canal, dans la profondeur du faubourg, sont aussi de cinquante pieds; toutes les autres
432 rues ont quarante-six pieds, excepté celle qui est limitrophe avec M. Daunoy, qui en représent quarante-huit, parce que M. Bernard Marigny se réserve deux pieds pour son usage du côté de la limite de M. Daunoy.

Nouvelle Orléans, 21st mai 1805.

(Signé) N. DEFINIELS.

Approuvé.

(Signé) BERNARD MARIGNY.

Approuvé par le conseil de ville le 22d mai 1805.

(Signé) JOHN WATKINS,
Président.

Par le président:

(Signé) BOURGEOIS, *Scre. Gr.*

En suit est écrit, certifié et approuvé le plan ci-contre à moi addressé par le conseil de ville pour passer l'acte de ce jour entre Mr. Bernard de Marigny et la corporation.

Nouvelle Orléans, le dix-sept juin 1805.

(Signé) JS. PITOT, *Maire.*

Pour copie conforme.

Nouvelle Orléans, septembre le 20 1809.

(Signé) M. BOURGEOIS, *Scre. Gr.*

Plan E.—Offered in evidence.—Filed April 29, 1859.

[To be filed in original.]

Document F.—Offered in evidence.—Filed April 29, 1859,

BERNARD MARIGNY
vs.
THE PONTCHARTRAIN R. R. Co. } No. 9777.

It is admitted that if the plaintiff's witnesses were present they could state under oath:

1. That the defendants are in possession of the parcel of ground which is the subject-matter of this suit.

2. That since the transfer by plaintiff to defendants, dated February 28, 1830, the defendants have filled up the canal and built the railroad upon it.

3. That the defendants have, moreover, built a depot and made other buildings—the whole more than twelve years ago.

4. That the canal referred to stops at the public road, and that no canal was opened from the river to the public road at the date of the transfer, to wit, February 28, 1830, but for many years after the sale the railroad ran to the levee.

5. That no canal has ever been opened from the public road to the levee.

It is further admitted that the property in dispute is worth more than five hundred dollars.

433 NUMBER FOUR.

Extrait du régistre des délibérations du conseil de ville de la Nouvelle Orléans, séance du 22d octobre 1810.

Arrêté que Mr. le maire écrira à Mr. Marigny pour l'inviter à consentir qu'il soit pris de la terre dans l'espace qu'il s'est réservé pour ouvrir un canal toutefois en commencant les fouilles à partir du fleuve, laquelle terre serait employée dans les travaux de levée sus-mentionnée.

Pour extrait conforme.

(Signé) M. BOURGEOIS,
Sre. Gr.

Je certifie que la copie ci-dessus est une copie exacte de l'original déposé aux archives du conseil.

N'elle Orleans, le 14th mai 1830.

(Signé) GALLIEN PREVAL,
Sec. Greff.

NUMBER FIVE.

Conseil de ville de la Nouvelle Orléans.

Sur l'invitation du conseil à Mr. Marigny qu'il eût à continuer la levée devant son canal, ou qu'il permit à la ville de la faire, et qu'au lie*n* d'un pont sur le canal à l'endroit du chemin qu'il ferait mieux de combler le canal dans cet endroit et sur toute la largeur du chemin, ou de permettre à la ville d'effecteur cette opération, M. Marigny a répondu qu'il permet à la ville de continuer selon ses desirs la levée devant le canal, ainsi que de combler le canal dans l'endroit du chemin ; pourvu toutefois qu'il soit bien entendu que lorsqu'il ouvrira son canal au fleuve, ou ceux qui seront à ses droits, il puisse les faire dans telle largeur qu'il jugera convenable jusqu'à celle de cinquante pieds, sans que la ville puisse se prévaloir d'aucune raison pour s'y opposer ; et pourvu aussi que la permission qu'il donne par le présent à la ville ne puisse lui faire croire qu'elle acquiert aucun droit de propriété sur les cinquante pieds de largeur allant jusqu'au fleuve qui se trouvent après la levée, lesquels seront reconnus par le conseil de ville la propriété de lui, Marigny, arrêté par le conseil de ville qu'aux termes de l'exposé de M. Marigny, dans

le séance de ce jour le maire est autorisé à faire finir la levée vis-à-vis le canal Marigny et a faire combler le dit canal dans l'endroit du pont à largeur du chemin.

Délibération du conseil de ville en la séance du 23d octobre 1811.

(Signé) M. BOURGEOIS,
Sec. Gr.

NUMBER SIX.

Conseil de ville de la Nouvelle Orléans.

Le conseil de ville, prenant en considération les observations du maire sur l'arrêté du 23 octobre dernier, rendu sur l'exposé de M. B. Marigny relativement à la portion de son canal située entre le grand chemin et le fleuve, déclare que par le droit de propriété qu'il reconnait à Mr. Marigny sur cet emplacement, il n'entend reconnaître d'autre droit que celui qu'a M. Marigny d'avoir un canal, et de prendre dans cet emplacement de la terre pour en user comme le dit sieur Marigny le jugera convenable.

Déclare en outre le conseil que par l'acte du 17th june 1805,
434 passé entre le corporation et M. Marigny, le dit sieur Marigny a les droits ci-dessus mentionnés.

En conséquence d'après l'explication qui précède, le conseil persiste dans le dit arrêté du 23d octobre dernier.

Délibérations du conseil de ville en sa séance du 23d novembre 1811.

(Signe) M. BOURGEOIS,
Secre. Gr.

Je certifie que la copie ci-dessus est une copie exacte de l'original déposé aux archives du conseil de ville.

N'elle Orléans, le 14th mai 1830.

(Signé) GALLIEN PREVAL,
Secre. Gr.

NUMBER SEVEN.

Entre les soussignés, Joseph Roffignac, maire de la Nouvelle Orléans, agissant au nom des maire, aldermen et habitans de la dite ville de la Nouvelle Orléans, en vertu d'une résolution du conseil de ville, dûment approuvé le 12th octobre de la présent année, et dont copie se trouve ci-jointé, d'une part, et Bernard Marigny, domicilié en la dite ville de la Nouvelle Orléans, d'autre part, a été convenu ce qui suit, savoir: Moi, Bernard Marigny, après avoir pris connaissance de la résolution du conseil de ville ci-dessus mentionnée, et dont copie est ci-annexée, donne par ces présentes plein et entier consentement pour moi, mes héritiers ou ayant-cause, à ce que le maire et le conseil de ville de la Nouvelle Orléans aient la faculté d'établir à leurs frais sur le canal Marigny, situé dans le faubourg du même nom, et duquel canal je me suis réservé la propriété un ou plusieurs ponts qui pourront être placés ou établis successivement au dit lieu, à mesure que les dits maire et conseils de la ville le croiront nécessaire pour la facilité des communications entre la ville et le faubourg Marigny. Le tout sous le condition expresse, et sans laquelle le dit consentment n'*eut* pas été donné:

1. Qu'aucun des dits ponts ne pourra être placé que dans la direction ou alignement des rues parallèles au fleuve qui aboutissent au dit canal; que la largeur de chacun de ces ponts ne pourra excéder la largeur de la rue dans la direction de la quelle ils seront respectivement placés, et

que l'entretien et la réparation d'iceux seront à la charge des dits maire et conseil de ville.

2. Que dans le cas où ce même canal serait converti en bassin ou en canal de navigation, les dits ponts devront être démolis, et que la terre, les bois ou autres matériaux qui en proviendront devront être enlevés à la première réquisition qui serait faite à cet égard au maire de la Nouvelle Orléans, soit de ma part, soit de la part de mes héritiers ou ayant-cause.

3. Que dans le cas où les dits ponts ne seraient pas démolis, au plus tard, quinze jours après la notification faite au maire en la manière susdite, il sera loisible alors pour moi, mes héritiers ou ayant-cause, de faire effecteur cette démolition et le déplacement de la terre, des bois ou autres matériaux en provenant aux frais et dépens des dits maire et conseil de ville.

Et moi, Joseph Roffignac, en ma qualité susdite, et agissant ainsi qu'il a été dit, déclare par ces présentes accepter, pour le maire, aldermen et habitans de la Nouvelle Orléans, les conditions auxquelles M. Bernard Marigny consent à ce qu'un ou plusieurs ponts soient établis sur la canal Marigny, et aux frais des dits maire, aldermen et habitans, pour la facilité des communications entre la ville et le faubourg
435 Marigny; c'est-à-dire, qu'aucun des dits ponts ne pourra être placé que dans la direction ou alignement des rues parallèles au fleuve qui aboutissent au canal susdit, que la largeur de chacun d'iceux ne devra pas excéder la largeur de la rue dans la direction de la quelle ils seront respectivement établis, et qui le dit ou les dits pont devront être entretenus et réparés aux frais du maire et du conseil de ville de la Nouvelle Orléans; qu'ils devront être démolis et que la terre, les bois ou autres matériaux en provenant devront être enlevés dans les cas où le dit canal serait converti en bassin ou en canal de navigation, et à la première réquisition qui serait faite à cet égard du maire de la Nouvelle Orléans, soit de la part de mon, dit sieur Bernard Marigny, soit de la part de ses héritiers ou ayant-cause; et, finalement, que dans le cas où le dit ou les dits ponts ne seraient pas démolis, au plus tard, quinze jours après la notification dûment signifiée au maire, en la manière susdite, cette démolition et le déplacement de la terre, des bois ou autres matériaux en provenant pourrant être faits par ordre du dit sieur Marigny, de ces héritiers ou ayant-cause, et ce aux frais et dépens des dits maire, aldermen et habitans de la Nouvelle Orléans.

C'est ainsi que le tout a été convenu entre nous. Fait double et de bonne foi, sous nos signatures privées et respectives, à la Nouvelle Orléans, le vingt-huit octobre mil huit cent vingt.

(Signé) BERNARD MARIGNY.
(") J. ROFFIGNAC.

Signé en présence de—
(Signé) JULES DAVEZAC,
(") ML. BOURGEOIS.

NUMBER EIGHT.

Conseil de ville de la Nouvelle Orléans, séance du 7th october 1820.

Lecture a été donnée d'une lettre de M. Bernard Marigny annonçant qu'il ne mettra aucune opposition à ce qu'un pont soit placé sur le canal Marigny dans l'alignement de la rue Casacalvo, pourvu que dans le cas où e même canal serait converti en bassin ou en canal de navigation le conseil de ville ne puisse mettre aucun obstacle à ce que ce pont soit

démoli, et il demande par cette même lettre que préalablement il soit passé un acte où cette clause sera stipulée.

Sur motion, résolu que le maire est autorisé à accepter la condition sus-mentionnée, tant à l'égard du pont qui soit être placé sur à cette partie du canal Marigny dans l'alignement de la rue Casacalvo qu'à l'égard de tous autres ponts qui pourraient être établis à avenir par la corporation sur divers points du dit canal pour la facilité des communications entre la ville et le faubourg Marigny, et qu'il sera passé un acte, sous seing privé, entre M. Bernard Marigny, d'une part, et le marie, agissant au nom de la corporation, d'autre part, où sera stipulée la clause qui fait l'objet du présent arrêté.

(Signé) J. SOULIE, *Récorder.*

Approuvé le 12th octobre 1820.

(Signé) J. ROFFIGNAC, *Maire.*

Pour copie conforme.

(Signé) M. BOURGEOIS,
Scre. Gr.

436 Je certifie que la copie qui précède est une copie exacte de l'original dépose aux archives du conseil de ville.

Nouvelle Orléans, le 14th mai 1830.

(Signé) GALLIEN PREVAL,
Scre. Gr.

Certificate.

I hereby certify the foregoing to contain a true extract from the record of the proceedings had in the fifth district court of New Orleans, in a certain suit where Bernard Marigny was plaintiff and the Pontchartrain Railroad Company was defendant, which record is on the files of this court under No. 6365.

In testimony whereof I have hereunto set my hand and affixed the seal of this honorable court, at the city of New Orleans, this the twenty-fourth day of June, anno Domini eighteen hundred and seventy.

[SEAL.] (Signed) M. P. JULIAN,
D'y Clerk.

TESTIMONY ON RULE TO DISSOLVE THE INJUNCTION IN SUIT No. 19.—FILED MAY 7, 1870.

State of Louisiana, eighth district court.

N. O., M. AND CHAT. R. R. CO. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

Testimony of John L. Lewis.

JOHN L. LEWIS, being duly sworn, deposes and says:

The Pontchartrain Railroad Company was incorporated in 1830, and I think that it was in full operation from the foot of what is now Peters street to the lake.

I think the steam-cars commenced running in the fall of 1832. Horse-cars were run on it for some time previous.

No cross-examination.

Testimony of R. J. Evans.—Filed May 7, 1870.

R. J. EVANS, being duly sworn, deposes and says:

I made the map now shown to me (map marked "Map B," and filed.) I made this map by actual measurement. It is a correct map of the place, so far as I could make it. It shows the tracks of the Pontchartrain Railroad Company as they existed before being removed, and the tracks of the Chattanooga Railroad Company as laid down—the infringement of the Chattanooga Railroad Company upon the tracks of the Pontchartrain Railroad Company. This is a map of the yard of the Pontchartrain Railroad Company, and from Peters street to about midway to Moreau and Casacalvo. The track of the Chattanooga Railroad was laid within the last ten years.

437 Cross-examined:

The strip between the lines A, B, C, and D is fifty feet, French measure.

The line A B is the upper limit, and the line C D is the lower limit of the Marigny Canal.

You have written "Freight platform torn down?" It was a platform raised to level with the floor of the cars when standing on the tracks beside it. It was made of timber and planking. It was not covered. It was the lower strip of ground. The material of the road that was taken up I saw inside the depot and alongside the track. That is, material which I supposed to be the material. It was laid on the platform of the freight depot and alongside the track. There is no appearance of a canal on the ground represented by that plan. I have resided in this city about ten years; since I have been here—for about ten years—I have seen nothing of a canal on the spaces which I have laid down on this map. The condition of the ground which I have laid down on my map seems to be a space of ground which has been filled up with shells, etc., and used for a cotton-yard and a freight and switching purpose.

In going down to the lake, have you ever seen a canal called Marigny Canal, used for commercial purposes?

No, sir; I have not had occasion to. There might have been one. There is a canal there which may have been used for commercial purposes. I saw a canal from Claiborne street, extending out some distance. There is a canal—this one of which I speak—on Elysian Fields street, extending some distance out from Claiborne, within the limits of the fifty feet, French. There is a track extending from near Josephine street to the river, and side tracks as you approach the river. The blue lines on the plan indicate the Pontchartrain tracks. Two of the three parallel tracks, and indicated by blue lines on the plan, are entirely on the space occupied by the canal. The third track is partially on that space. I made the surveys of the tracks as they now exist on the day before yesterday.

Testimony of L. H. Pilie.

L. H. PILIE sworn:

I am a surveyor by profession; I have been living here nearly fifty-one years; I was on the first car run on the Pontchartrain Railroad; it was a horse-car; I know this was in 1831; it was then run with a locomotive in 1832, it ran from the old depot near the levee to the lake; the track of the railroad was then the same as it is now. I have exam-

ined the produced map and the ground yesterday; this is a correct map; I measured the ground yesterday. This represents the condition of things as they are now; it shows the condition of the Pontchartrain Railroad as it is left; the infringement of the track of the Chattanooga Railroad on the track of the Pontchartrain Railroad is shown. I am familiar with that locality; there was a canal there to my knowledge; there was a canal on Elysian Fields street from the river down to the elbow about Florida avenue, then extending on Marigny avenue to the Bayou St. John; I have seen it since I was a child; I have often fished in it; part of it is still in existence from Claiborne street to the elbow, and on Marigny avenue to the Bayou St. John; that part on Marigny avenue to the Bayou St. John was widened by the city of New Orleans, and is now used as a draining-canal; this was partly filled up by the Pontchartrain Railroad Company when they built the road; then, some years ago, it was filled up when they were altering from St. John the Baptist street, going towards Claiborne street;
438 and lately by order of the council, under an ordinance now in existence, they were about to fill up the greater part of it, having laid cross-ties; I was hauling dirt from the lake to fill it up when I was removed from office of city surveyor, in 1867. When I first knew the canal it was in use as a canal, but not for commercial purposes—only for drawing wood from the swamp. Mr. Marigny objected to people using it to draw fire-wood from the swamp; and at that time, thirty-odd years ago, the canal ran through what was known as the Marigny plantation, which was formerly Vilau Dubriel's; it existed in 1754, and then the canal was called the canal "El Molino de Arroz;" there is a map of it in court; there was a mill on it—on what is called Peters street now.

Cross-examined:

All the lots which have names on them on the map of 1806 were sold by Mr. Marigny; this embraces the greater part of the lots on the map; I know of no lots still held by Mr. Marigny. Mr. Marigny is dead; he died about eighteen months ago. The lots had been generally sold by Mr. Marigny in 1806; there is a portion of the lots on every square fronting on Elysian Fields street sold as early as 1806—from Moreau street to Good Children street. Mr. Marigny only used the canal to draw wood from the swamp; I have never seen any other use made of it, nor ever known any other; he continued to use it in the same manner after the Pontchartrain Railroad began to run, in 1832; but used it only a few years longer; it is hardly possible to say when he stopped using it. A portion of the canal on Elysian Fields street, from Peters street to beyond where it leaves Elysian Fields street, was filled up in 1830 to Casacalvo street; then, in 1837 or 1838, they did fill up that part from Casacalvo street for about two squares—to Craps street that is; in 1853 or 1855, they filled up that from Craps street to Good Children street, and reduced its width from Morales street to near Claiborne street, and in 1867 they were about, at the request of the city, filling up the whole of it as far as Solidelle street; they had thrown up the dirt and brought cross-ties. That portion from Peters street to the bend has not, for thirty years, been used for anything but to draw wood from the swamp.

(Defendants in rule here offered in evidence a copy of the "plan directeur du faubourg M. Bernard Marigny," made by L. Finiels, ingenieur, 16th March, 1806.)

Cross-examination continued:

This is the same as the plan of 1805, except that in this the ground

is divided only into squares, while in the other the squares are divided into lots. At the time the Pontchartrain Railroad Company was incorporated there was a canal in the centre, and two walks, fifty feet wide, one on each side; they were called avenue, rue, or promenade Élysée; and the twelve feet spoken of in the ordinance of the fifteenth of March, 1830, were part of the fifty feet; in 1830 there was a canal of forty-five feet in width from Peters street to Good Children street, and of about four feet in depth; and from Good Children street, running back to the Bayou St. John, it was about twenty-five feet wide, with very little water; it was closed then; before it had had connection with the river—that I did not see. I suspect there must still have been wooden culverts
439 passing to the river, but I do not know it; there was water in it; we used to fish in it, and catch crawfish and patassats.

Note of evidence.—Filed 7th May, 1870.

N. O., M. AND CHAT. R. R. Co *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19. May 7, 1870.

Note of evidence on rule to dissolve injunction in suit number 19.

Plaintiff in rule offers in evidence the charter of the Pontchartrain Railroad Company and all the acts amendatory thereto; all to be from printed copies.

Also a copy of the original ordinance of March 15, 1830, now filed, and marked "A."

Enter also the record (all the proceedings, orders, and documents constituting the suit No. 21 of the docket of this court—a complete transcript thereof).

Also transcript of record in suit of The Pontchartrain Railroad Company vs. The New Orleans, Mobile and Chattanooga Railroad Company, No. 2757 of the seventh district court, for the parish of Orleans.

Also the plans and maps filed by both parties, in said suit No. 2757, in the seventh district court—to be produced when necessary.

Also an act of sale from Bernard Marigny to Pontchartrain Railroad Company, passed 23d February, 1830, before Felix de Armas, notary—copy to be found at pages 19 to 31, inclusive, in transcript of record offered in evidence in this suit—record No. 2757 of the seventh district court.

NOTE.—All the above evidence will be found in the records of suits Nos. 21 and 2757, also made a part of this record.

"Act of deposit Y," recorded and deposited, at request of B. Marigny, before P. Pedesclaux, notary public.—Filed June 28, 1870.

Par devant Philippe Pedesclaux, notaire public pour la ville et paroisse de la Nouvelle Orléans, et en présence des témoins ci-après nommés, fut présent Mr. Bernard Marigny, demt. en cette ville, lequel a par ces présentes déposé, pour minute du notaire soussigné, avec réquisition de les enrégistrer, cinq pièces que sont:

La première, un écrit sous signature privée, en date du dix-sept août dernier, dont la teneur est comme suit:

"Entre nous soussignés, Pierre Denis de Laronde, représenté par Mr. François Lambert, et Mr. Bernard Marigny, sommes convenus *et con-*

venus de ce qui suit: Mr. Marigny vend à Mr. Laronde les îlets face au canal No. 13, 14, 15, 16, 17 et 18, à l'exception des terrains No. 96, 100 et 101; plus, trente-huit terrains dans les îslets No. 19, 20, 29 et 30, à l'exception de terrains No. 248, 214, 215, 216 et 217 et 163, déjà vendus et payés. Il est entendu qu'aucun terrain face au canal n'a été vendu, mais Mr. Marigny étant obligé de poursuivre l'annullation de trente-cinq terrains, il ne peut dans le moment passer l'acte de vente à
440 Mr. Laronde; c'est pourquoi il se réserve jusqu'au mois d'avril prochain pour passer l'acte de vente; et il est entendu que si parmi les personnes contre lesquelles on poursuit les annullations de terrains dans les îslets susmentionnés il s'en trouvait qui voulussent garder leurs terrains, Mr. Marigny s'oblige à aloner à Mr. Laronde pour chaque terrain deux cents piastres. Cette vente est faite aux conditions suivantes:

"1. Mr. Laronde, ou tout autre propriétaire à ses droits, s'oblige à entretenir la rue ou promenade face au canal et les faces des rues où se trouvent ses terrains, et se soumet au plan et observations du nouveau faubourg déposé chez Mel. de Armas, lequel est conformé à celui sous la date du 10 novembre 1809.

"2. Pour la somme de vingt-quatre mille sept cents piastres, payable en mars prochain, en deux billets de la somme de douze mille trois cents cinquante piastres chaque, à l'ordre de Mr. Bernard Marigny, et qu'il déclare avoir reçu.

"Fait double et de bonne foi, en présence de Mr. Léandre Lacoste et Vincent Ramos, témoins, Nouvelle Orléans, ce 17 août 1818; et payé entreligne est bon, sus-mentionnés rayé ne vaut pas, du nouveaux faubourg entrelignes est bon, deux rayé ne vaut pas.

"BERNARD MARIGNY.

"Par pro Mr. de Laronde:

"FS. LAMBERT.

"Témoin: VINCENT RAMAS.
"Témoin: LÉANDRE LACOSTE.

"J'approuve l'écrit ci-dessus.

"P. DENIS DE LARONDE."

La seconde, un autre écrit, sous seing privé, en date du vingt-huit septembre, dont la teneur est comme suit:

"Entre nous soussignés, Mr. François Lambert, représentant Mr. Pierre Denis de Laronde, et Mr. Bernard Marigny, convenons de ce qui suit: Mr. Bernard Marigny déclare que par acte sous signature privée, en date du 17 août 1818, il a vendu à Mr. de Laronde une certaine quantité de terrains situés au nouveau faubourg Marigny, centre le canal et le chemin du bayou, lesquels sont représentés sur le plan du 10 novembre 1810. Aujourd'hui il lui vend tous les terrains qui lui restent au dit nouveau faubourg, conformément au plan déposé chez Michel de Armas, lequel est conformé à celui du 10 novembre 1810, fait par Pillié, et qu'il a remis au sieur acquéreur; plus, il vend toutes les terres qui sont au delà du nouveau faubourg, lesquelles terres et terrains sont limités par une ligne à soixante-quinze pieds du centre du canal, par les limites des habitations du chemin du bayou et de Gentilly, et par la rue des Bons Enfans; il vend aussi le morceau de terre qu'il a eu de Mr. Castanedo conformément au plan fait par Pottier le 11 septembre 1810; plus, il cède et transmet à Mr. Laronde la créance de Mr. Toutant de huit cents piastres du 24 mars 1812, pour deux terrains, celle de Mr. Fell pour un terrain laquelle est de cinq cents cinquante piastres. Le sieur vendeur déclare qu'à l'exception des ter-

rains déjà vendus à Mr. Laronde, ceux de Prosperfoy, ceux de Dreux, ceux de Toutant, celui de Vincent Laloir, et celui vendu à Fell, il n'y a aucun terrain vendu que ceux qui ont été abandonnés et dont il poursuit les annullations afin d'en pouvoir passer la vente à Mr. de Laronde. Cette vente est fait aux conditions suivantes:

"1. Mr. de Laronde, ou toute autre propriétaire à ses droits, s'oblige d'entre'nir la rue et promenade face au canal et le chemin face à ses terres jusqu'à l'habitation Ducourneau, Mr. Marigny se réservant le droit d'y jetter les terres provenantes du canal sauf à lui à les aplanir, se soumettant de plus le sieur acquéreur au plan du nouveau faubourg et observations déposés chez Michel de Armas, lequel est conformé à celui sous la date du 10 novembre 1809.

"2. Pour la somme de quinze mille piastres, payables le 12 avril 1820, et pour lesquels Mr. de Laronde a fourni un billet de Pierre St.
441 Amant, endossé par lui, payable à cette époque, et un de lui à la même époque de trois mille piastres, à l'ordre du sieur vendeur, lesquels billets ont été remis au sieur vendeur, qui en donne décharge. Mr. Marigny s'oblige dans le cas que Mr. de Laronde voulut faire une barrière pour le séparer des habitations du chemin du bayou et de Chantilly, et une barrière face à la rue des Bon Enfans, de lui laisser faire des pieux dans sa ciprière de l'autre côté du canal. Le présent, sous seing privé, sera converti dans une vente au greffe sous deux mois.

"Fait double et de bonne foi, en présence de M. Léandre Lacoste et Vincent Ramos, témoins, le vingt-huit septembre 1818, au marge lesquels billets ont été remis au sieur vendeur *vale*.

"BERNARD MARIGNY.
"FS. LAMBERT.

"VINCENT RAMOS, *Témoin*.
"LÉANDRE LACOSTE, *Témoin*.

"P. S.—À la demande de Mr. Laronde pour expliquer l'acte ci-contre relativement à la limite que je donne à soixante-quinze pieds du centre du canal, il est entendu que vingt-cinq pieds font partie du canal que je me réserve, et les cinquante autres pieds pour servir à l'usage du canal et à tous les effets auxquels un chemin peut être assujetti.

"Nouvelle Orléans, le 28 septembre 1818.

"BERNARD MARIGNY.

"En outre, Mr. B. de Marigny me remettra un plan des terres non comprises dans le faubourg, et que le dit plan sera borné sur les faces du chemin du bayou et des terres de Gentilly, des bornes de distance en distance. Du reste j'approuve le dit écrit. En outre, il y aura deux cent cinquante arpens de superficie, comme il parait par le plan.

"P. DENIS DE LARONDE."

La troisième, le plan du nouveau faubourg Marigny, fait par le Sr. Jh. Pilié, le dix novembre mil huit cent neuf, contenant les mêmes observations que celui qu'il a déposé en l'étude de Michel de Armas, le dix-sept septembre mil huit cent neuf, dont il est une copie exacte; et le cinquième, le plan de trois islets dans le nouveau faubourg Marigny, et des terres au delà, fait par Mr. Joseph Pilié, voyer de la ville, le premier octobre dernier. Toutes lesquelles pièces, après avoir été de lui certifiées véritables et signées, en présence du notaire et des témoins, soussignés et enrégistrées comme ci-dessuset des autres parts par le dit notaire, sont demeurées ci-annexées, à l'exception seulement du nouveau faubourg Marigny, qui étant trop volumineux pour être annexé aux présentes, est resté suspendu en l'étude du notaire soussigné.

D'après le certificat du conservateur à la date de ce jour, que le dit Sr.

Marigny a remis du notaire soussigné, il n'y a point d'hypothèques contre lui sur les terrains et terres mentionnés dans les deux écrits sous seings privés ci-dessus relatés.

Fait et passé en l'étude, à la Nouvelle Orléans, le vingt et un novembre mil-huit cent dix-huit, en présence des Srs. Michel Fourcisy et Vincent Bilote, témoins, qui ont signé avec le comparant et le dit notaire. Les mots "même faubourg me" rayés mils.

(L'original est signé:)

BERNARD MARIGNY.

FOURCISY.
V. BILOTE.

PHI. PEDESCLAUX,
Not. Pub.

STATE OF LOUISIANA,
Parish of Orleans:

I, Andrew Hero, jr., a notary public and the custodian of notarial records in and for this parish and city of New Orleans, duly commissioned and qualified, do certify the foregoing as a true and correct copy of the original act extant in the records of Philippe Pedesclaux, formerly a notary public in this city, and whose records I hold as custodian thereof.

442 As attest my hand and seal, as custodian aforesaid, at New Orleans, this twenty-third day of June, A. D. 1870.

[SEAL.] (Signed) ANDREW HERO, JR.,
Custodian of Notarial Records.

Case submitted.—Extract from the minutes of June 28, 1870.

THE PONCHARTRAIN R. R. CO.
vs.
N. O., M. AND C. R. R. CO. } No. 116.

This case, fixed for this day for trial, came on. Present, Lea, Finney & Miller, for plaintiff; Campbell, Spofford & Campbell, for defendant.

After hearing pleadings, evidence, and counsel, the court took the matter under advisement.

443 State of Louisiana, eighth district court for the parish of Orleans.

NEW ORLEANS, MOBILE AND CHATTANOOGA Railroad Company
versus
PONTCHAR'AIN RAILROAD COMPANY ET ALS. } No. 21.

Petition.—Filed April 6, 1870.

State of Louisiana, eighth district court, parish of Orleans.

The petition of the New Orleans, Mobile and Chattanooga Railroad Company, whose domicil is in New Orleans, respectfully shows that they were incorporated by an act of the general assembly of the State aforesaid, by act No. 28, approved the 19th of August, 1868, and were authorized by the said act to construct a railroad from any point in the city of New Orleans between Calliope and Girod streets, and between Delta street and the levee in said city, or along or upon a street or

streets near the levee, or upon or along the levee, as may be deemed most proper and expedient, to a point at or near the junction of the levee and Spain streets; thence by a curved line to Enghien street; thence along and upon Enghien street and Lafayette avenue to Claiborne street; and thence to the line of the States of Louisiana and Mississippi, as will more fully appear by the second section of said act.

2. That in various amendatory acts the said act of incorporation has been recognized and affirmed, and particularly in the act of the general assembly, approved the 21st February, 1870, and by that the petitioners were empowered to locate, construct, maintain, and use, for the
444 passage of its engines, cars, the tracks of its railroad, with the requisite curves to and from the same, from the levee to the lines designated in the ordinances of the city of New Orleans for the extension of Claiborne street, along and upon the portions of Elysian Fields and intervening streets originally designated for the two central banquettes or walks in Elysian Fields street, the said banquettes being the strips of ground, twelve feet in width, one upon each side of and adjoining the land said to be owned by the Pontchartrain Railroad Company, in the central portion of said street, and no ordinance heretofore passed by the city of New Orleans, or which may hereafter be passed by the city of New Orleans, shall be of any force or validity to prevent the location, construction, maintenance, and use of the said tracks as aforesaid.

And the said company is hereby authorized and empowered, without further authority than is given by the acts, to remove from said banquettes any material or structure it may deem necessary to remove in order to construct its tracks as aforesaid; and in the same section of the said act, being section one of the same, it was declared that no act of any party or parties whatsoever, and no act of any court or judge heretofore done, or which may hereafter be done, shall be of any force or validity to prevent the location, maintenance, and use of the tracks as aforesaid, to which act and section of the act reference is craved for exactness.

3. Your petitioners further show that the general assembly, in the said section of the same act, confirmed the location of the lines of the said railroads, as evidenced by their maps and surveys as made and filed, the same having been filed with the mayor of the city in 1868, and in the office of the secretary of state; and the mayor and common council were prohibited from passing ordinances, and the ordinances they have made were annulled; and the intention of the general assembly that the full and perfect enjoyment of the powers and franchises and authorities granted was explicitly declared.

4. Your petitioners state the construction of their projected road from New Orleans to Mobile, in Alabama, has been carried on with energy and vigor; that at the cost of some millions of dollars the same has progressed and its entire completion is contemplated before the end of the present year; that the tracks within the corporate limits have been partially laid, and but little remains to be done to their complete operation and for effective use; and that they anticipated no opposition to an enterprise that promises so much of public convenience and prosperity to the city.

But that the Pontchartrain Railroad Company, having a road of some six or seven miles to the lake, many (in 1830) years ago obtained a permission from the city authorities, or, to be exact, from the mayor, by direction of the common council, by which they were allowed the use

of said banquette, termed in the ordinance road or walking avenue, for the running of their road, in so far that no inconvenience shall result therefrom to the public.

Your petitioners state that, by the act of 1870 aforesaid in favor of your petitioners, this ordinance is directly repealed, and the same declared to be wholly inoperative, and your petitioners are directly authorized to remove the same.

5. Your petitioners show that a portion of the road of the said Pontchartrain Railroad Company has been placed on one of said banquettes, and they have run their road on that, the one, but that they have made no use of that kind over the other, nor have laid any track upon it; but they have erected structures and depot buildings, so as wholly to obstruct and destroy its use as a walking avenue, and have
445 prevented passage across the street, so as to compel parties to go around their structures.

6. Your petitioners aver that the control over the public right in said avenues or banquettes belongs to the legislature, and that no authority at any time existed in the corporate authorities of New Orleans to grant an indefeasible or irrevocable privilege on the same; and that the legislature had full power to revoke any license, permission, or grant made by the corporate authorities; and that the permission to the said Pontchartrain Railroad Company was precarious and has been continued till the public did suffer inconvenience and injury, as is conclusively shown by the annulment of the ordinance of 1830—the permission of the mayor in their charter and acts relative thereto by the general assembly.

7. Your petitioners further show that on the 21st of February last the Pontchartrain Railroad Company, having full knowledge that the act of the general assembly aforesaid was passed by the same, and either informed of or anticipating the approbation of the governor of said act, with the precise purpose of hindering, obstructing, and opposing the same, and to impose vexatious, injurious, and expensive delay to your petioners, without any color or cause for their averments, except that derived from the fact that the general assembly had passed the act and that the governor had approved or probably would approve it, on that day sued out an injunction against your petitioners in the seventh district court, upon allegations charging your petitioners with a purpose lawlessly to dispossess them of the said property, and claimed in the petition that they owned and possessed the said banquettes; all of which will more fully appear by a copy of the petition filed herewith.

8. Your petitioners were served with citation, and answered immediately the same, and moved the said district court to dissolve the same, which motion is now pending, and at the same time they moved for an injunction upon a reconvention in their answer.

9. Your petitioners further show that on the sixteenth day of March, 1870, this court was provided for by an act of the general assembly, and exclusive jurisdiction was given to this court to issue injunctions, and the seventh district court was divested of all the jurisdiction in suits and proceedings in which jurisdiction was granted to the eighth district court, except to transfer the same to the eighth district court, by proper order in the said court; whereby it would seem to be clear that the said court could not issue an original injunction upon the prayer of your petitioners, or to do any act towards relieving your petitioners from the injunction sued out to avoid the act of the general assembly, and which bears date of the same day of its approval.

10. Your petitioners further show that no reference is made in the

aid petition, and that it is not at all presumable that the honorable the judge of the said court was at all aware of the purpose of the said Pontchartrain Railroad Company to evade its force and effect, nor to assume any power that was denied in the act; nor do your petitioners presume that there was any notice to him of that fact.

11. To the end that the obstructions attempted by the Pontchartrain Railroad Company by the means aforesaid, and that your petitioners may be maintained in the grant of a portion of the public domain for a public object which has received the legislative sanction, they pray the intervention and aid of this honorable court against the Pontchartrain Railroad Company, its superintendent, George Pandely, and its president, J. M. Lapeyre, who are charged with its execution, management, and who are the principal agents in obstructing, hindering, de-
446 laying, and opposing the purposes and acts of the general assembly and the rights as granted to your petitioners.

They pray that the injunction issued in the seventh district court be declared inoperative from and after the sixteenth day of March last, the date of the enactment under which this court was organized, and the jurisdiction of said court divested, except for the purpose of transfer.

2. That an original injunction issue from this court to the Pontchartrain Railroad Company, its president aforesaid, and its superintendent, from impeding, hindering, and obstructing the petitioners from laying their tracks on the said two banquettes, and that they remove, with as little delay as possible, their property and material therefrom.

3. That the said parties be required to surcease from any act, proceeding, or the employment of other means to prevent your petitioners from using all or any part of either of said banquettes for their tracks aforesaid, and that all orders may be made and writs issued to give full effect and operation to the said proceedings of the general assembly and the acts passed by the same and approved by the governor of the State.

Your petitioners pray for citations to issue according to the practice of the court, and that such other relief be granted as is consistent with law and right.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
For the Plaintiffs.

Affidavit.

Before me personally came William S. Williams, treasurer of the said New Orleans, Mobile and Chattanooga Railroad Company, who maketh oath and saith that the matters of fact stated in this petition are true, to the best of his belief and knowledge.

(Signed) WM. S. WILLIAMS.

Sworn and subscribed before me this sixth day of April, 1870.

[SEAL.] (Signed) J. D. HOUSTON,
Dy Clerk.

Service accepted.

Service of petition, citation, and rule accepted for defendants April 7, 1870.

(Signed) LEA, FINNEY & MILLER,
Attorneys for Defendants.

Document.—Copy of petition in suit of P. R. R. Co. vs. N. O., M. and C. R. R. Co., seventh district court.—Filed April 6, 1870.

To the honorable the judge of the seventh district court for the parish of Orleans:

The petition of the Pon'chartrain Railroad Company, a corporation established by the laws of the State, and domiciled in New Orleans, respectfully shows:

That petitioner was duly incorporated by an act of the legislature of Louisiana approved 20th January, 1830, with power to construct a railroad from New Orleans to Lake Pontchartrain, and to enjoy the
447 corporate privileges and franchises set forth in said act; that by said act of incorporation petitioner was clothed with all the rights and powers necessary for the construction of said railroad from New Orleans to some suitable point on Lake Pon'chartrain, not exceeding ninety feet wide, with as many sets of tracks as said company may deem proper; and by said act petitioner is to have perpetual succession under its corporate name; all of which is more fully shown by said act, which is specially referred to for fuller explanation and greater certainty.

That by the ordinance of the city council of the city of New Orleans, approved March 15, 1830, petitioner was authorized during the whole period of the existence of its charter, to cause the said railroad to run in the street, road, or walking avenue which lines the space of ground reserved by Bernard Marigny, and known under the appellation of Marigny canal at the period when he established the old and new suburb, starting from the bend of said canal to Levee street, the whole to be established under the direction of the city surveyor; which was done, as more fully appears by reference to said ordinance, specially referred to for fuller explanation and greater certainty, and is annexed as a part hereof; which space of ground belonged to said city at the date of said pact.

That said space of ground embraces two strips of land, twelve feet in width; one upon each side of and adjoining a certain strip of land in the central portion of Elysian Fields street, running fifty French feet wide, and extending from the river to the elbow of the canal Marigny, which fifty feet were acquired by petitioner by purchase from said Marigny, by act before Felix de Armas, notary, of date the 23d February, 1830, annexed as part hereof; and said two strips of land, each of twelve feet in width, and said strip of fifty French feet wide, as is shown by the plan made by C. A. de Armas, surveyor, of date 21st September, 1855, herewith filed, and especially referred to for fuller explanation and greater certainty.

That upon the faith of said grant, and in accordance with the charter of petitioner, it has constructed and located on one of said strips of twelve feet wide, to wit, the strip on the lower side of said strip of fifty French feet wide, for the use of its engine and cars, the tracks of its railroad, with its requisite curves; and said tracks are laid along and upon said strip of twelve feet wide throughout its whole length and extent; that upon both of said strips of twelve feet wide, and upon the strip acquired by petitioner from said Marigny, it has erected its depots and necessary buildings for the deposit of the freight and for the accommodation of the travellers upon said road; that said tracks, said depots and buildings, are of great value; that said tracks have been laid as aforesaid for upwards of thirty-five years; that during the same period

the depots and necessary buildings aforesaid of petitioner have been located and erected upon both of said strips of twelve feet wide, and upon said strips of fifty feet wide, and during the same period the petitioner has been in the peaceable and undisturbed possession of its said tracks, its said depot and buildings, and its engines and cars, during said period, have been running upon said tracks; that said tracks, depots and buildings are of great value to petitioner—have been constructed and located by a large expenditure of money; that said value exceeds seven hundred thousand dollars; all of which expenditure has been made by petitioner upon the faith of said grant and of its corporate privileges, etc., conferred by its said charter.

That by reason of the premises, petitioner is entitled to *to* the exclusive use, possession, and enjoyment of said two strips of land, each of twelve feet in width, and of said strip of fifty French feet wide,
448 and to be maintained in such use, possession, and enjoyment during the whole period of the existence of its charter; that to said use, possession, and enjoyment it has a vested right; that said charter and grant of said city are contracts with petitioner; that petitioner's use, possession and enjoyment of said two strips of land, each of twelve feet in width, and of said strip of fifty French feet wide, can not be molested, disturbed, or taken from petitioner without impairing the obligation of said contract, and without violating the provisions of the Constitution of the United States and of the State of Louisiana protecting said contract.

That said tracks have been constructed, said depots and buildings have been erected, said engines and cars have been running, and petitioner has been in the peaceable possession and exercise of all its privileges and rights, for said period of thirty-five years, with the assent, sanction and approbation of the mayor, aldermen and inhabitants of the city of New Orleans.

That the New Orleans, Mobile and Chattanooga Railroad Company, a corporation established by the laws of Louisiana, domiciled in New Orleans, threaten and are about to interfere with and disturb petitioner in the use, possession, and enjoyment of said two strips of land, each of twelve feet in width, and of said strip of fifty French feet wide, and are about to locate and construct, for the passage of its engines and cars, the tracks of its railroad from the levee and upon the portions of Elysian Fields street and intervening streets—said portion constituting and being said two strips of ground twelve feet in width, one upon each side and adjoining said strips of fifty feet wide acquired by petitioner from Bernard Marigny as aforesaid, and upon one of which strips the tracks of petitioner's railroad are already laid, without ever attempting to expropriate petitioner's property by the mode governing expropriation, and without even offering compensation to petitioner.

That if said New Orleans, Mobile and Chattanooga Railroad Company are permitted to consummate said interference and disturbance of said petitioner's said use and possession and enjoyment, and to locate and construct their said tracks as aforesaid, they will inflict injury and loss upon petitioner, of an irreparable character; that said injury and loss will largely exceed five hundred dollars in value, and an injunction is necessary to protect the rights of petitioner in the premises.

Wherefore, petitioner prays that considering the affidavit and bond hereto annexed, a writ of injunction issue, directed to the said New Orleans, Mobile and Chattanooga Railroad Company, its officers and agents, prohibiting them from interfering with or disturbing petitioner in any manner and use in the possession and enjoyment of said two

strips of land of twelve feet in width and of said strip fifty French feet wide, and from locating and constructing along and upon said two strips the tracks of the railroad of said New Orleans, Mobile and Chattanooga Railroad Company, and from interfering with or disturbing in any manner the running of petitioner's engines and cars upon petitioner's said tracks, and from interfering with or disturbing petitioner in the use, possession and enjoyment of petitioner's said depot and buildings used for and in connection with petitioner's said railroad; and prohibiting and enjoining said New Orleans, Mobile and Chattanooga Railroad Company from applying to any other court or authority for any order or action in the premises or relating to the subject-matter of this petition, or in support of any pretensions said company may set up to the said two strips of land, each twelve feet in width, and the said strip of fifty French feet wide; or to interfere with the running with pe-
449 titioner's said engines and cars upon petitioner's said tracks, or with petitioner's use of its said depots and buildings, and with the exercise of petitioner's privileges and powers; that said New Orleans, Mobile and Chattanooga Railroad Company be duly cited to answer hereto; that after due proceedings, petitioner have judgment; that said injunction be made perpetual, with costs; and for general relief.

(Signed) LEA, FINNEY & MILLER,
Attorneys.

Affidavit.

John M. Lapeyre, who being duly sworn, deposes and says that the facts and allegations contained in the foregoing petition are true and correct.

(Signed) J. M. LAPEYRE.

Sworn to and subscribed before me this 21st February, 1870.

(Signed) H. J. DUSSOR,
D'y Clerk.

Order.

Let a writ of injunction issue in this case as within prayed for, and according to law, upon the plaintiff giving bond, with good and solvent security, in the sum of fifty thousand dollars, conditioned as the law directs.

(Signed) T. WHARTON COLLENS, *Judge.*

NEW ORLEANS, *February* 21, 1870.

A true copy:

CLERK'S OFFICE, 21*st February*, 1870.

(Signed) H. J. DUSSOR,
D'y Clerk.

Rule.—Filed April 6, 1870.

N. O., M. AND C. R. R. CO.
vs.
PON'CHARTRAIN R. R. CO. ET ALS. } No. 21.

Motion is made upon the petition filed in the said cause for an injunction to issue in accordance with the petition, and that a rule be

made upon the defendants to show cause to the contrary, returnable on a day to be appointed, to wit, Monday, the 11th day of April, 1870.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
Attorneys for the Plaintiff.

Service of this rule accepted.

(Signed) LEA, FINNEY & MILLER,
Attorneys.

450 *Citations.—Issued April 7, 1870.*

State of Louisiana, eighth district court for the parish of Orleans, in the city of New Orleans.

N. O., M. AND C. R. R. Co.
vs.
PONTCHARTRAIN R. R. Co. ET ALS. } No. 21. Citation.

Mr. J. M. Lapeyre, president, and George Pandely, superintendent of the Pontchartrain Railroad Company:

You are hereby summoned to comply with the demand contained in the petition and rule, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the eighth district court for the parish of Orleans in ten days after the service hereof.

Witness the honorable Henry C. Dibble, judge of our said court, this 7th day of April, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.] (Signed) JAMES D. HOUSTON,
D'y Clerk.

Sheriff's return on citation issued to J. M. Lapeyre, president Pontchartrain Railroad Company.—Filed April 9, 1870.

Received April 7, 1870, and on the eighth day of the same month and year served copy of within citation and accompanying petition and rule on J. M. Lapeyre, president Pontchartrain Railroad Company and defendant herein, by leaving the same at his domicil, No. 183 St. Anne, corner of St. Claude street, in the hands of his wife, Angeline Lapeyre, a person apparently over the age of fourteen years, and residing at the same domicil, and whose name and other facts connected with this service I learned by interrogating her; the said defendant herein being absent from home at the time of said service.

Returned same day.

(Signed) P. AD. FORTIER,
D'y Sheriff.

Sheriff's return on citation issued to George Pandely, superintendent Pontchartrain Railroad Company.—Filed April 9, 1870.

Received April 7, 1870, and on the eighth day of the same month and year served copy of within citation and accompanying petition and rule on George Pandeley, superintendent of the Pontchartrain Railroad Company, one of the defendants herein, in person.

Returned same day.

(Signed) P. AD. FORTIER,
D'y Sheriff.

Continuance.—Extract from minutes April 11, 1870.

N. O., M. AND C. R. R. Co.
vs.
PON'CHARTRAIN R. R. Co. ET ALS. } No. 21.

The rule in this case, fixed for this day for trial, was ordered to be continued to Wednesday, the 13th inst., at 10 o'clock a. m.

451 *Continuance.—Extract from minutes April* 13, 1870.

N. O., M. AND C. R. R. Co.
vs.
PONTCHARTRAIN R. R. Co. ET ALS. } No. 21.

The rule in this case, taken by the plaintiff on the defendant, to show cause why an injunction should not issue, fixed for this day, was ordered to be continued to Thursday, the 21st April, 1870, at 10 o'clock a. m.

Continuance.—Extract from minutes April 21, 1870.

State of Louisiana, eighth district court for the parish of Orleans.

N. O., M. AND C. R. R. Co.
vs.
PONTCHARTRAIN R. R. Co. ET ALS. } No. 21.

This matter, fixed for this day for trial, was ordered to be continued indefinitely.

Exception.—Filed April 26, 1870.

Eighth district court, parish of Orleans.

N. O., M. AND C. R. R. Co.
vs.
PONTCHARTRAIN R. R. Co. ET ALS. } No. 21.

The defendants herein respectfully decline the jurisdiction of this honorable court, on the grounds following, viz:

1st. That before the creation of this honorable court by the act of the legislature the honorable the seventh district court for the parish of Orleans was already seized of jurisdiction of the same issues involved herein between the real parties in interest, viz: The New Orleans, Mobile and Chattanooga Railroad Company, and the Pontchartrain Railroad Company; that said court had granted an injunction before the creation of this honorable court, and motion was made to dissolve the same by the plaintiff, which has been argued and submitted, and is now, and was then at the time of the filing of the petition herein, under advisement in the said seventh district court, and the plaintiff herein has since the creation of this honorable court submitted himself to the jurisdiction of that tribunal; all of which fully appears by reference to the record of this cause, hereunto annexed and made part of this exception.

That the said seventh district court is a court of competent jurisdiction in the premises, and is legally seized thereof; and these defend-

ants plead the pendency of the said suit in the said seventh district court in abatement.

2d. That this honorable court is without jurisdiction to remove, annul, or in anywise control the proceedings in the premises of the said seventh district court, and that the exercise of such jurisdiction by this honorable court involves the exercise of appellate jurisdiction.

Wherefore defendants pray to be hence dismissed with their costs.

(Signed) LEA, FINNEY & MILLER,
Attorneys.

452 *Exception and answer.—Filed April 26, 1870.*

Eighth district court, parish of Orleans.

N. O., M. AND C. R. R. Co. *vs.* PONTCHARTRAIN R. R. Co. ET ALS. } No. 21.

The defendants the Pontchartrain Railroad Company except to the rule and motion herein taken by the plaintiffs on the seventh of April current, on the grounds following, to wit:

1st. That this honorable court is without jurisdiction to dissolve an injunction granted before its creation by a court of competent jurisdiction.

2d. That the honorable the seventh district court for the parish of Orleans, before the passage of the act creating this honorable court, was already seized of jurisdiction of the cause of action involved herein, and between the same parties; and in due course of law granted an injunction precisely repugnant to that sought by the plaintiff; that a motion to dissolve that injunction has been argued, and is now under advisement in that honorable court; that after the passage of the law creating this honorable court, the plaintiff herein appeared and argued the motion to dissolve the injunction, without exception to the jurisdiction of that honorable court, and submitted to its jurisdiction in the premises; which motion is still pending, under advisement, and undetermined therein; and under the constitution and laws of this State that court has ample authority and jurisdiction to deal with and determine all the issues presented in the said cause of the Pontchartrain Railroad Company vs. the New Orleans, Mobile and Chattanooga Railroad Company; that the issues herein presented are the same presented in that cause, as will appear by an examination of the records of the two causes, which are referred to and made part hereof; that this honorable court cannot lawfully take and entertain jurisdiction of the same matters which are pending in litigation in another court of competent jurisdiction. Neither can this honorable court lawfully control or quash the process of another court of competent jurisdiction.

3d. That the jurisdiction of the seventh district court is conferred by the constitution, and cannot be destroyed or diminished by an act of the legislature.

4th. That if this honorable court is alone competent to entertain and determine the said cause pending in the seventh district court, parish of Orleans, which is respectfully denied, then the cause must be transferred and proceeded with as if originally brought in this court; that your honor can now make no order except such as may be necessary to transfer it, and when it is transferred, it comes into this honorable court with all its pleadings, proceedings, orders, and incidents; and

your honor is required to proceed therewith in the condition in which you find it. That finding that cause at issue, it is one to be entertained and disposed of, and not a new one between the same parties, embracing the same issues brought in this honorable court.

5th. That no cause to dissolve the injunction already granted is shown; that on the contrary, the record fully sustains it. That this honorable court, upon the same showing, would grant the same relief.

6th. That no new injunction can be granted until the one now in force is disposed of.

453 The one now in force comes into this court with the same force as if granted by your honor, and must be so dealt with under the law. Your honor will not grant a precisely repugnant injunction.

7th. That by the proceedings had, the orders granted the process issued in the seventh district court, these defendants have vested rights, especially in the order and writ of injunction granted, and the legal effect thereof, which, under the constitution of the State, cannot be annulled, as is pretended, by a subsequent and retroactive act of the legislature, if that act be so construed as to have the meaning attributed by the plaintiff; which, however, is desired to be the proper construction.

8th. That no sufficient cause is shown for the injunction applied for, and the petition is destitute of equity and merits, and the affidavit wholly insufficient to authorize the granting of an injunction, and that it is not sworn to by the proper officer.

9th. That upon the pleadings, affidavits, exhibits, and proceedings of the two suits, viz, the one in the seventh district court and this suit, the injunction already granted should not be dissolved, and no injunction should issue as prayed for by plaintiff.

10th. That these respondents, and none of their codefendants, have ever disturbed or interfered with, or now intend to disturb or interfere with, the plaintiff in the exercise of any right whatever, but only seek to enjoy property and franchises acquired by contract forty years ago, and enjoyed for over thirty years without question or disturbance.

11th. That neither of the codefendants, Pandely or Lapeyre, have any interest in this controversy than as officers and stockholders of this corporation.

Defendants pray that the rule be discharged with costs, and for all general and equitable relief.

(Signed) LEA, FINNEY & MILLER,
Attorneys.

Agreement.—Filed January 9, 1871.

Eighth district court.

N. O., M. AND C. R. R. Co.
vs.
PONTCHARTRAIN R. R. Co. ET ALS. } No. 21.

Note of evidence.—January 9, 1871.

It is agreed between counsel that the testimony and evidence offered in the case of the New Orleans, Mobile and Chattanooga Railroad Company vs. City of New Orleans, George Pandely et als., No. 19 of the docket of this court, shall be used in this case, No. 21.

Continuance.—Extract from the minutes of January 9, 1871.

N. O., M. AND C. R. R. Co.
vs.
PONTCHARTRAIN R. R. Co. ET ALS. } No. 21.

This case, fixed this day for trial, was ordered to be continued to tomorrow at 10 o'clock a. m.

454 State of Louisiana, eighth district court for the parish of Orleans

NEW ORLEANS, MOBILE AND CHATTANOOGA Railroad Company
versus
CITY OF NEW ORLEANS ET ALS. } No. 19.

RECORD IN SUIT NO. 5788, DOCKET U. S. CIRCUIT COURT.—FILED JANUARY 25TH, 1871.

Circuit court of the United States, fifth circuit and district of Louisiana

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company. } No. 5788.

Petition for executory process.—Filed February 23d, 1869.

United States circuit court, district of Louisiana.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company. } No. 5788.

The petition of Charles Morgan, a citizen of the State of New York residing in the city of New York, in the said State, respectfully represents:

That the New Orleans, Opelousas and Great Western Railroad Company, which has its domicil fixed in the city of New Orleans, in the State of Louisiana, and is a corporation created and existing
455 therein, under the laws of the State of Lousiana, and is in law a citizen of the State of Louisiana, was formed and organized under the act of the legislature of Louisiana entitled "An act for the organization of corporations for works of public utility," approved March 11th, 1852, for the purpose of constructing a railroad from the town of Algiers, on the opposite bank of the Mississippi River from New Orleans, and thence to Berwick's Bay, crossing said bay, and thence to or near Washington, on the Courtableau, in the parish of St. Landry, and afterwards to some point on the Sabine River, with a view to the extension of the said road across the State of Texas to El Paso, on the Rio Grande, and ultimately to the Pacific Ocean; and was afterwards, by the act of the legislature of the State of Louisiana, entitled "An act to incorporate the New Orleans, Opelousas and Great Western Railroad Company," approved April 22d, 1853, specially created a body corporate and politic, with full power to sue and be sued, plead and be

impleaded, and to do and perform all other acts, and enjoy all the rights and privileges incident to corporations, as will be more fully seen by reference to the said act of incorporation, at page 115 of the acts of 1853.

And your petitioner further represents that by an act of the legislature of the State of Louisiana entitled "An act to extend the power of railroad companies," approved March 20th, 1856, in addition to the powers before conferred by law upon railroad companies, it was specially provided that any railroad company established under the laws of the State of Louisiana might borrow from time to time such sums of money as might be required for the construction or repair of any railroad, and for that purpose might issue bonds on their obligations, secured by mortgage upon the franchises and all the property of said company, and payable at such times and places as the president and directors might designate, with power to sell, pledge, or otherwise dispose of said bonds on such terms as the said president and directors might deem expedient; and that it was further specially provided in the said act that a mortgage made by any company as aforesaid should be binding in the several parishes through which a railroad might pass, by the recording of the mortgage in the parish where the principal office or domicil of the company was located, as will more fully appear by reference to the said act at page 205 of the Acts of the State of Louisiana of 1856.

And your petitioner further represents that the said New Orleans, Opelousas and Great Western Railroad Company, on the 17th day of March, 1859, resolved, that, for the purpose of obtaining means for the further construction of the road, the president shall be authorized and instructed to issue two thousand bonds of the New Orleans, Opelousas and Great Western Railroad Company, dated first April, 1859, redeemable on the first of April, 1889, for one thousand dollars each, bearing interest at the rate of eight per cent. per annum, payable semi-annually in coupons attached to the said bonds of eight pounds five shillings sterling, or forty dollars each, the principal of the said bonds made payable at their office in New Orleans, and the interest thereof being made payable in New Orleans, New York, or London, as the president by his endorsement might determine, and that the president should be authorized and instructed to secure the payment of the said bonds and the interest thereon, by a first mortgage on the first grand division of the railroad of the company (from Algiers opposite the city of New Orleans) to Berwick's Bay, together with the land over which the said road is constructed, the equipments, appurtenances, rights, and franchises of the company applicable to that portion of the road, as will be seen by reference to a duly certified copy of the resolution passed
456 by the board of directors of the said New Orleans, Opelousas and Great Western Railroad Company on the said 17th day of March, 1859, which is herewith filed, marked Exhibit A.

And your petitioner further represents that, acting under the authority and instructions granted and given by the said resolutions, William G. Hewes, president of the New Orleans, Opelousas and Great Western Railroad Company, on the first day of April, 1859, by public act passed before Selim Magner, a notary public for the parish and city of New Orleans, and in presence of two witnesses, declared that, in pursuance of the resolutions of the board of directors of the said company, passed on the 17th day of March, 1859, as aforesaid, and in virtue of the authority conferred on the said company by the said acts of the legislature of the State of Louisiana, approved on the 22d day of April,

1853, and on the 20th day of March, 1856, he had on that day issued two thousand bonds of the New Orleans, Opelousas and Great Western Railroad Company, signed by him and by Benjamin F. Flanders, treasurer of the company, redeemable on the first day of April, 1889, for the sum of one thousand dollars each, bearing interest at the rate of eight per cent. per annum, payable semi-annually in coupons of forty dollars, or eight pounds five shillings sterling, each, the principal of the said bonds being payable at the office of the company, and the interest thereof payable in New Orleans, New York, or London, as the said president, by his endorsement, might provide; and all of which bonds the said notary declared had been severally marked "ne varietur," and countersigned by him, for the purpose of more effectually identifying the same with the said act.

And your petitioner further represents that in the said public act the said William G. Hewes, president of the said New Orleans, Opelousas and Great Western Railroad Company, declared that for and in consideration of the premises, and in order to secure the full, faithful, and punctual payment, and the redemption of each and all of the said bonds on that day issued, as aforesaid, to any future holder or holders thereof, and to each and every one of them, when the same should become due and payable, and the payment of the interest accruing thereon in the manner and at the periods of time in the said public act stipulated, as evidenced by the coupons attached to the said bonds, respectively, payable on the first day of April and October of each year, the said New Orleans, Opelousas and Great Western Railroad Company granted in favor of Edmond J. Forstall, or bearer, as well as in favor of all and every person or persons whomsoever who might become the holder or holders of said bonds or coupons, or any of them, a mortgage lien or privilege upon the whole of the completed grand division of the railroad between Algiers (opposite the city of New Orleans, and Berwick's Bay, then in full operation, constructed by the said company in pursuance of the charter, and being a distance of eighty miles, together with the road-beds of the main tracks and branches, and also all the depots and lands specially appertaining to them, all the buildings, wharves, and all the equipments and franchises belonging and appertaining to the said division of the said road therein mortgaged and referred to; and all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils, implements, rights of way, and effects generally of every nature and description whatsoever, in use upon the said division of the said railroad, or in any way attached to or appertaining to the same, without any exception or reservation,
as well as all such as should or might thereafter, at any time, be
457 placed upon or attached to said division of the said railroad, whether for the purpose of replacing others removed, or from any other cause whatsoever; and promising not to alienate or encumber, or in any wise affect the same, or any part or portion thereof, to the prejudice of the said mortgage, as will more fully appear by reference to an authentic copy of the said act herewith filed, marked Exhibit B.

And your petitioner further represents that the said public act of mortgage was duly recorded on the 8th of April, 1859, in the office of the recorder of mortgages in and for the city and parish of New Orleans, as will be seen by reference to the certificate of the said recorder of mortgages herewith filed, marked Exhibit C.

And your petitioner further represents that he is the legal holder of eight hundred and forty (840) of the said bonds issued by the said New Orleans, Opelousas and Great Western Railroad Company, as afore-

said, and marked "ne varietur," and countersigned by the said notary to identify them with the said public act of mortgage aforesaid, given on the property of the said company, as described and set forth in the said public act, and that he is also the legal holder of three thousand six hundred and twenty-five (3,625) coupons of interest of forty (40) dollars each, now past due and unpaid, attached to the said bonds, and of four thousand two hundred and ninety-six (4,296) coupons of interest detached, of forty (40) dollars each, which belong to and bear the numbers of other bonds issued by the said New Orleans, Opelousas and Great Western Railroad Company, and marked "ne varietur," and countersigned by the said notary to identify them with the said public act of mortgage, given to secure the payment of the said bonds and coupons of interest as aforesaid, which said bonds and said coupons of interest held by petitioner are hereunto annexed for reference, and are made part of this petition, and are set forth, enumerated, and described in the book herewith filed and marked Exhibit D.

And your petitioner further represents that the said New Orleans, Opelousas and Great Western Railroad Company has altogether neglected and failed to pay the said seven thousand nine hundred and twenty-one coupons of interest, as they respectively fell due; that the same are still due and unpaid, and that the said company is now indebted to your petitioner on the same, in the sum of three hundred and sixteen thousand eight hundred and forty ($316,840) dollars.

And your petitioner further represents that in the sixteenth annual report of the president and directors of the New Orleans, Opelousas and Great Western Railroad Company to the stockholders of the said company, dated on the 25th of January, 1869, it is declared that there are 15,465 past due interest coupons of forty (40) dollars each, on the first-mortgage bonds of the said company, amounting to six hundred and six thousand six hundred ($606,600) dollars, which are now outstanding and unpaid, as will be seen by reference to a copy of an extract of the said report, duly certified under the seal of the said company, which is herewith filed, marked Exhibit E.

And your petitioner further represents that the said act of mortgage passed before Selim Magner, a notary public as aforesaid, and in the presence of two witnesses as aforesaid, imports a confession of judgment, and that petitioner has a right in the premises to proceed by executory process against the said New Orleans, Opelousas and Great Western Railroad Company, and have the said property subject to the said mortgage, consented, stipulated, granted, and contained in the said public act of mortgage, seized and sold according to law for the whole debt, the payment of which is secured by the said mort-
458 gage, and to have the price of the said property subject to the said mortgage, when sold, payable as follows, to wit: The sum of six hundred and six thousand six hundred dollars ($606,600), the amount of the said coupons of interest past due, which are now outstanding and unpaid as aforesaid, in cash, and the remainder payable on the first day of April, 1889, with interest thereon at the rate of eight (8) per cent. per annum thereon, payable semi-annually, on the first day of April and the first day of October of each year, the terms of the credit granted by the original contract to the said New Orleans, Opelousas and Great Western Railroad Company in the said bonds and the said public act of mortgage.

And your petitioner further represents that he is informed and believes that the said coupons of interest in law bear interest from and after they respectively arrive at maturity and become payable, and that

he now expressly reserves his right to claim interest on the same, respectively, in another suit.

Wherefore your petitioner prays that executory process may be granted him in the premises; that three days' notice may be given to the said New Orleans, Opelousas and Great Western Railroad Company to pay your petitioner the said sum of three hundred and sixteen thousand eight hundred and forty ($316,840) dollars, due and unpaid as aforesaid on the 7,921 coupons of interest held by your petitioner; and that in default of the said payment the said mortgaged property hereinbefore described may be seized and sold according to law for the whole debt, the payment of which is secured by the said act of mortgage, the price of the said sale to be payable as follows, to wit: The sum of six hundred and six thousand six hundred ($606,600) dollars, the amount due on interest coupons past due on the first-mortgage bonds of the said company outstanding and unpaid as aforesaid, and the costs of this proceeding payable in cash, and the remainder payable on the first day of April, 1889, with interest thereon at the rate of eight per cent. per annum, payable semi-annually on the first day of April and the first day of October of each year, the terms of credit granted by the original contract to the said New Orleans, Opelousas and Great Western Railroad Company in the said public act of mortgage and the said bonds identified therewith. And your petitioner further prays for all and general relief.

(Signed) MILES TAYLOR,
Attorney for Petitioner.

Order.—Filed March 30th, 1869.

It is ordered that executory process issue in this case as prayed for in the within petition, and that the said New Orleans, Opelousas and Great Western Railroad Company be notified for three days to pay petitioner the said sum of three hundred and sixteen thousand eight hundred and forty dollars ($316,840) and the costs of this proceeding, and that in default of said payment the said mortgaged property described in the petition may be seized and sold according to law for the whole of the debt, the payment of which is secured by the said mortgage described and set forth in said petition, the price of the said sale payable as follows, to wit, the sum of six hundred and six thousand six hundred dollars ($606,600) and the costs of this proceeding, in cash, and the remainder payable on the 1st day of April, 1889, with interest thereon at the rate of eight per cent. per annum, payable semi-annually on the 1st day of April and the 1st day of October of each year.

March 30th, 1869.

(Signed) E. H. DURELL, *Judge.*

459 *Exhibit A, referred to and filed with the foregoing petition.*

Copy of resolutions of the board of directors of the New Orleans, Opelousas and Great Western Railroad Company passed on the seventeenth day of March, 1859.

1st. Resolved, That for the purpose of obtaining means for the further construction of the road the president be, and he is hereby, authorized and instructed to issue two thousand bonds of the New Orleans, Opelousas and Great Western Railroad Company, dated first April, 1859, redeemable on the first of April, 1889, for one thousand dollars each,

bearing interest at the rate of eight per cent. per annum, payable semi-annually in coupons attached to said bonds of eight pounds five shillings sterling, or forty dollars, each, the principal of said bonds being made payable at their office in New Orleans and the interest thereof being made payable in New Orleans, New York, or London, as the president by his indorsement may determine.

2d. Resolved, That the president be further authorized and instructed to secure the payment of said bonds and the interest thereon by a first mortgage on the first grand division of the railroad of the company from Algiers (opposite the city of New Orleans) to Berwick's Bay, together with the land over which the said road is constructed, the equipments, appurtenances, rights, and franchises of the company applicable to this portion of the road.

3d. Resolved, That such an amount of money as may be necessary to meet each semi-annual interest of the outstanding bonds of the company shall be provided for pro rata, by monthly deposits in the Louisiana State Bank of this city, and entered as follows: "The New Orleans, Opelousas and Great Western Railroad Company's interest account;" and all funds so deposited shall be considered special, and shall not be used for any other purpose than for the payment by said bank of running interest on the bonds of the company as maturing. And the president is hereby authorized to sign an act of agreement with the president of said bank binding the company as aforesaid.

4th. Resolved, That in case the Louisiana State Bank should decline to continue to be the agents of said New Orleans, Opelousas and Great Western Railroad Company, or in case the charter of said bank should expire, then the president of this company shall choose any other of the chartered banks in this city for the carrying out of the purposes of these resolutions.

NEW ORLEANS, *November 17th*, 1868.

A true copy from the minutes from the record.

[SEAL.] (Signed) GEO. W. SQUIRES,
Secretary.

Exhibit B, referred to in and filed with the foregoing petition.

Mortgage New Orleans, Opelousas and Great Western Railroad Company to Edmund J. Forstall.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that this day, before me, Selim Magner, a notary public in and for this city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, personally came and appeared William G. Hewes, esq., of this city, president of the New Orleans, Opelou-
460 sas and Great Western Railroad Company, a duly incorporated institution of this State, and herein acting in his said capacity by virtue and in pursuance of the resolutions of the board of directors of said company, passed on the seventeenth day of March, eighteen hundred and fifty-nine, which resolutions, duly certified copies whereof are hereunto in the margin annexed for reference, are in the words and figures following, to wit:

1st. Resolved, That for the purpose of obtaining means for the further construction of the road the president be, and he is hereby, authorized and instructed to issue two thousand bonds of the New Orleans, Opelousas and Great Western Railroad Company, dated first April, 1859, redeemable on the first April, 1889, for one thousand dollars each, bearing interest at the rate of eight per cent. per annum, payable semi-

annually in coupons attached to said bonds, of eight pounds five shill ings sterling, or forty dollars, each, the principal of said bonds being made payable in New Orleans, New York, or London, as the president by his endorsement may determine.

2d. Resolved, That the president be further authorized and instructed to secure the payment of said bonds and the interest thereon by a first mortgage on the first grand division of the railroad of the company from Algiers (opposite the city of New Orleans) to Berwick's Bay, together with the land over which said road is constructed, the equipments, appurtenances, rights, and franchises of the company applicable to this portion of the road.

3d. Resolved, That such an amount of money as may be necessary to meet each semi-annual interest of the outstanding bonds of the company shall be provided for pro rata, by monthly deposits in the Louisiana State Bank of this city, and entered as follows: "The New Orleans, Opelousas and Great Western Railroad Company's interest account;" and all funds so deposited shall be considered special, and shall not be used for any other purpose than for the payment *of* said bank of running interest on the bonds of the company as maturing. And the president is hereby authorized to sign an act of agreement with the president of said bank binding the company as aforesaid.

4th. Resolved, That in case the Louisiana State Bank should decline to continue to be the agents of the said New Orleans, Opelousas and Great Western Railroad Company, or in case the charter of said bank should expire, then the president of this company shall choose any other of the chartered banks of this city for the carrying out of the purposes of these resolutions.

Which said appearer declared that, in pursuance of the above-recited resolutions, and also by virtue of the authority conferred upon said company by, first, the ninth section of an act of the legislature of the said State of Louisiana, entitled "An act to incorporate the New Orleans, Opelousas and Great Western Railroad Company," duly approved on the twenty-second day of April, 1853 (No. 149); and, second, by another act of the same legislature, duly approved on the twentieth day of March, 1856, entitled "An act to extend the powers of railroad companies" (No. 194), he has in his capacity aforesaid this day issued two thousand bonds of the New Orleans, Opelousas and Great Western Railroad Company, signed by him and by Benjamin F. Flanders, treasurer of said company, redeemable on the first day of April, eighteen hundred and eighty-nine, for the sum of one thousand dollars ($1,000) each, bearing interest at the rate of eight per cent. per annum, payable semi-annually in coupons of forty dollars, or eight pounds five shillings sterling, each, the principal of said bonds being made payable
461 at the office of the company in the city of New Orleans, and the interest coupons in New Orleans, New York, or London, as he, the said president, may by his endorsement provide. And all which bonds have been severally marked "ne varietur," and countersigned by me, the said notary, for the purpose of more effectually identifying the same herewith.

Now, therefore, in consideration of these premises, and in order to secure the full, faithful, and punctual payment, and the redemption of each and all the said bonds (this day issued as aforesaid) to any future holder or holders thereof, and to each and every one of them, when the same shall become due and payable, together with the interest accruing thereon, in the manner and at the periods of time hereinabove stipulated, as evidenced by the coupons attached to the said bonds respect-

ively, payable on the first days of April and October of each year, the said New Orleans, Opelousas and Great Western Railroad Company do, by these presents, by the president (the said William G. Hewes), grant, in favor of Edmond J. Forstall, or bearer, as well as in favor of all and every person or persons whomsoever who may become the holder or holders of said bonds or coupons, or any of them, a first-mortgage lien or privilege upon the whole of the completed grand division of the railroad between Algiers (opposite the city of New Orleans) and Berwick's Bay, now in full operation, constructed by the said company in pursuance of their charter, and being a distance of eighty miles, together with the road-beds of the main track and branches, and also all the depots and lands specially appertaining to them, all the buildings, wharves, and all the equipments and franchises belonging and appertaining to this division of the road herein mortgaged and referred to, and also all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils, implements, rights of way, and effects generally of every nature and description whatsoever in use upon the said division of the said railroad, or in any wise attached or appertaining to the same, without any exception or reservation, as well as all such as shall or may hereafter, at any time, be placed upon or attached to said division of the said railroad, whether for the purpose of replacing others removed therefrom or from any other cause whatsoever; the said company promising, by their said president, not to alienate nor encumber, nor in any wise affect the same or any part or portion thereof to the prejudice of these presents.

By reference to the annexed certificates of the recorders of mortgages in and for the parish of Orleans, Jefferson, St. Charles, La Fourche, Interior, Assumption, Terre Bonne, and St. Mary, respectively traversed by the division of the said railroad herein mortgaged, it will appear that there exists no mortgage or encumbrance whatsoever inscribed against the said division of the said railroad, franchises, and appurtenances, nor upon any of the lands or property connected therewith, owned by the said company.

And now personally came and appeared the said Edmond J. Forstall, who, after having read the foregoing act of mortgage, declared that he does, by these presents, accept the same as well for himself as for all and every other person or persons who may hereafter become the purchaser or purchasers, assignee or assignees, holder or holders, of the said bonds or coupons, or any number thereof, or any of them, together with all the rights, privileges, and benefits thereunto belonging or in any wise appertaining.

Thus done and passed in my office at the said city of New Orleans, in the presence of Edward G. Gottschalk and Forester Brugier, witnesses of lawful age, domiciliated in this city, who hereunto subscribed
462 their names, together with the said parties and me, the said notary, on this first day of April, in the year of our Lord one thousand eight hundred and fifty-nine.

(Signed) WILLIAM G. HEWES, *President.*
EDM. J. FORSTALL.
E. G. GOTTSCHALK.
F. BRUGIER.
S. MAGNER, *Not. Pub.*

A true copy. New Orleans, 9th November, 1868.
[SEAL.] (Signed) S. MAGNER, *Not. Pub.*

[5-c. int. rev. stamp affixed and cancelled.]

Exhibit C, referred to and filed with the foregoing petition.

By act before S. Magner, notary public, dated 1st April, 1859, William G. Hewes, president of the New Orleans, Opelousas and Great Western Railroad Company, granted in favor of Edmond J. Forstall a first-mortgage lien and privilege upon the whole of the contemplated grand division of the railroad between Algiers (opposite the city of New Orleans) and Berwick's Bay, now in full operation, together with the road-beds, branches, depots, lands, buildings, wharves, cars, engines, wagons, machinery, right of way, etc., etc., to secure the payment of two thousand bonds of said railroad company dated 1st April, 1859, signed by said Hewes as president, and Benjamin F. Flanders, treasurer of said company, redeemable on the 1st April, 1889, for $1,000 each, with interest at 8 per cent. per annum, payable semi-annually in coupons of $40 or £8 5 shillings each, which coupons are attached to said bonds, and payable on 1st days of April and October of each year. All which bonds were paraphed by said notary.

New Orleans, April 8th, 1859.

(Signed) JOHN HOLMES,
Recorder.

Mortgage, $2,000,000, with int., etc., etc.

I, the undersigned, deputy recorder of mortgages for this city and parish of Orleans, do hereby certify the above to be a true and correct copy of the record of the act of mortgage recorded in B 73, fo. 85 of this office.

New Orleans, November 18th, 1868.

[SEAL.] (Signed) A. DUCATEL, JR., *Dy Rr.*

Exhibit E, referred to in and filed with the foregoing petition.

Extract from the sixteenth annual report of the president and directors to the stockholders of New Orleans, Opelousas and Great Western Railroad Company, dated 25th January, 1869.

The total indebtedness of the company at this time is as follows:

1,987 first-mortgage bonds of one thousand dollars each, on 80 miles of contemplated road	1,987,000 00
34 second-mortgage bonds of one thousand dollars each, issued in settlement of 850 past-due coupons of first-mortgage bonds, $40	34,000 00
463 Bills payable, with interest on same to 1st January, 1869, issued for 1,145 first-mortgage coupons, of $40 each	40,966 24
Outstanding unpaid coupons of first-mortgage bonds, 15,165 of $40	606,600 00
Outstanding coupons, unpaid, of second-mortgage bonds, including those of January 1st, 1869, 102 of $40	4,080 00
Balance claimed by U. S. Government on 1st January, 1869	34,011 59
	2,706,657 83
Of this sum there is now due in cash on 1st-mortgage bonds	606,600 00

On bills payable, with interest on same, 1st January, 1869, issued for first-mortgage coupons	$20,966 24
On outstanding coupons of second-mortgage bonds	4,080 00
Balance claimed by the U. S. 1st January, 1869	34,011 59
Total	$685,657 83

A true copy.
[SEAL.] (Signed) A. B. SEGER,
President.

Certificate of discontinuance and of payment of costs.—Filed February 23d, 1869.

Received, New Orleans, February 23d, 1869, from Miles Taylor, attorney for Charles Morgan, the sum of two hundred and ten dollars, amount costs in full in the suit of Charles Morgan vs. The New Orleans, Opelousas and Great Western Railroad Co., No. 180 of the docket of the 6th district court for the parish of Orleans.
[SEAL.] (Signed) WM. WOEPLER, *Clerk.*

Certificate of the clerk.—Filed February 23d, 1869.

U. S. circuit court, district of Louisiana.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

Miles Taylor, the attorney of Charles Morgan, the plaintiff in the above-entitled case, has this day filed or deposited with the clerk of the court, as annexed to and made part of the petition in said case, the following:

1st. A copy of the resolutions of the board of directors of the New Orleans, Opelousas and Great Western Railroad Company, passed on the 17th day of March, 1859, marked Exhibit "A."

2d. An authentic copy of the act of mortgage passed before Selim Magner, notary public, on the 1st of April, 1859, by the New Orleans, Opelousas and Great Western Railroad Company to Edmond J. Forstall and others, to secure the payment of bonds and interest coupons issued by the company, marked Exhibit "B."

3d. A certificate of the recorder of mortgages of the city and parish of Orleans, dated Novevember 18th, 1868, showing the recording of
464 the said mortgage act in the mortgage office of the city and parish of New Orleans on the 8th of April, 1859, which is marked Exhibit "C."

4th. Eight hundred and forty bonds of $1,000 each, issued by the New Orleans, Opelousas and Great Western Railroad Company on the 1st of April, 1859, and 3,625 coupons of interest of $40 each detached, which belonged to and bear the numbers of bonds issued by the New Orleans, Opelousas and Great Western Railroad Company, and which bonds, and coupons of interest attached and detached, are set forth, enumerated, and described in a certain book marked Exhibit "D."

5th. The book marked Exhibit "D."

6th. A certified copy of an extract of or from the sixteenth annual report of the president and directors of the New Orleans, Opelousas and Great Western Railroad Company to the stockholders of the company, dated 25th of January, 1869, and marked Exhibit "E."

February, 23d, 1869.

(Signed) D. URBAN, *Clerk.*

Writ of seizure and sale.—Issued March 30th, 1869. *Returned and filed November 20th*, 1869.

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth judicial circuit and district of Louisiana.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

The President of the United States to the marshal of the United States for the district of Louisiana, greeting:

You are hereby commanded to make legal demand from the New Orleans, Opelousas and Great Western Railroad Company of the payment of the sum of three hundred and sixteen thousand eight hundred and forty dollars ($316,840), and the costs of this proceeding, cash, and that in default of said payment to seize and sell according to law (for the whole of the debt, the payment of which is secured by the mortgage described and set forth in the plaintiff's petition) the property belonging to the said company, and described as follows: The whole of the contemplated grand division between Algiers (opposite the city of New Orleans) and Berwick's Bay, in full operation, constructed by the said company in pursuance of their charter, and being a distance of eighty miles, together with the road-beds of the main track and branches, and also all the depots and lands specially appertaining to them, all the buildings, wharves, and all the equipments and franchises belonging to and appertaining to the said division of the said road, and all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils, implements, rights of way, and effects generally of every nature and description whatsoever in use upon the said division of the said railroad or in any way attached to or appertaining to the same, without any exception or reservation.

The price of the said sale payable as follows, to wit: The sum of six hundred and six thousand six hundred dollars ($606,600), and the costs of this proceeding, in cash, and the remainder payable on the 1st day of April, 1889, with interest thereon at the rate of eight per cent. per
465 annum, payable semi-annually on the 1st day April and the 1st day of October of each year.

And what you do in the premises you make due return thereof, together with this writ, to our said court, according to law.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at New Orleans, this 30th day of March, 1869.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *Dy Clk.*

Marshal's return on the foregoing writ.

U. S. circuit court.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company. } No. 5788.

Writ of seizure and sale received March 31st, 1869, by the U. S. marshal, and on the 31st day of March, 1869, served on the New Orleans, Opelousas and Great Western Railroad Company, by delivering to A. B. Seger, president of said company, at the office of said company, No. 69 Canal street, a notice to pay into my hands, within three days from the service of said notice, the sum of $316,840, due to the plaintiff, and the costs, and that in default of such payment I should seize and sell the property described in the petition filed and order made in the said cause, which accompanied the said notice and served therewith, to satisfy the mortgage debt, agreeably to the said order and according to law.

And on the 5th day of April, 1869, more than three days having elapsed after the service of the said notice and the said petition, and the said order made on the same, and default having been made in the payment of the said sum or any part thereof, I proceeded to seize and take into my possession the property described in the document hereto annexed, marked "A" and made part hereof. And after the expiration of the legal delay from the date of the service of notice of said seizure on the said New Orleans, Opelousas and Great Western Railroad Co., I advertised the said property for sale by advertisements announcing the sale to take place at the entrance to the custom-house on Old Levee street, between Canal and Custom-house streets, in this city, on the 25th of May, 1869, at twelve o'clock m. Said advertisements were inserted and published in three newspapers in the city of New Orleans, to wit, in the New Orleans Republican, Commercial Bulletin, and New Orleans Picayune, from the 6th day of April, 1869, to the day of sale, being full thirty days from the date of the first notice given in said newspapers. Said advertisements were inserted and published in said newspapers on the 16th, 20th, 24th, and 29th April, 1869, and on the 4th, 11th, 18th, and 25th of May, 1869.

And after having further complied with and performed all the additional previous legal requisites, and after the said property duly appraised, I did expose the same at public sale at auction, according to law, at the said entrance to the custom-house on Old Levee street, between Canal and Custom-house streets, in this city, on the said 25th day of May, 1869, at twelve o'clock m., when, after making due proclamation of said sale, and duly crying the said property and appurtenances, the same were adjudicated unto Charles Morgan, of the city of New York, he being the last and highest bidder thereon, for the price and sum
466 of ($2,050,000) two million and fifty thousand dollars, of which said sum, according to the published conditions of said s[illegible] ($686,000) six hundred and eighty-six thousand dollars and the e[illegible]le, suit, to wit, $15,825, were paid to me in cash in United States [illegible]osts of notes, and the remainder of the purchase price, to wit, ($1[illegible] treasury million three hundred and forty-eight thousand one h[illegible],348,175) one enty-five dollars, the said purchaser, Charles Morga[illegible]ndred and sev- ment of on the 1st day of April, 1889, with inter[illegible]., assumes the pay- [illegible]st thereon at the rate

of 8 per cent. per annum, payable semi-annually, on the 1st day of April and 1st day of October of each year, until the final payment and extinction of the whole on the 1st day of April, 1889. And the said property and appurtenances described in the advertisement hereto annexed, and more fully in the document marked "A," also hereto annexed as part hereof, remains specially mortgaged for the final payment of the said balance of purchase price, with the interest as aforesaid due and accruing thereon.

New Orleans, November 20th, 1869.

(Signed) F. J. HERRON,
Late U. S. Marshal,
Per J. R. WEST,
Late Dy U. S. Marshal.

Document annexed to the foregoing return.

U. S. circuit court.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

To the New Orleans, Opelousas and Great Western Railroad Co.:

By virtue of a writ of seizure and sale issued and to me directed by the hon. circuit court of the United States for the fifth circuit and district of Louisiana in the above-entitled suit, I hereby notify you to pay into my hands within three days from the service of this notice three hundred and sixteen thousand eight hundred and forty dollars, due to plaintiff, and costs; and that in default of such payment, I shall seize and sell the property described in the accompanying petition and order served herewith to satisfy the mortgage debt, agreeably to said order and according to law.

(Signed) JOHN FAHY,
Dy Marshal.

U. S. MARSHAL'S OFFICE,
New Orleans, March 31st, 1869.

Return on above notice.

Notice of demand served March 31st, 1869, and on the same day served a copy of the within notice, and copy of the petition and order in the said case accompanying the same, on the New Orleans, Opelousas and Great Western Railroad Company, by delivering them to A. B. Seger, president of said company, at their domicil, No. 69 Canal street, in the city of New Orleans.

(Signed) JOHN FAHY,
Dy Marshal.

U. S. MARSHAL'S OFFICE, 31*st March*, 1869.

467 *Document annexed to the foregoing return on writ of seizure and sale.*

United States marshal's office, district of Louisiana, U. S. circuit court.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

To the New Orleans, Opelousas and Great Western Railroad Co.:

Take notice that I have seized, and, after the legal delay, shall proceed to advertise and sell, according to law, "the whole of the completed grand division of the railroad between Algiers (opposite the city of New Orleans) and Berwick's Bay, now in full operation, constructed by the said company in pursuance of their charter, and being a distance of eighty miles, together with the road-beds of the main track and branches, and also all the depots and lands specially appertaining to them; all the buildings, wharves, and all the equipments and franchises belonging and appertaining to this division of the road; and also all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils, implements, rights of way, and effects generally of every nature and description whatsoever in use upon the said division of the said railroad, or in any wise attached or appertaining to the same, without any exception or reservation," to pay and satisfy the writ issued in this case (with interest and costs), unless the same is immediately paid.

(Signed) JOHN FAHY,
Deputy Marshal.

Notice of seizure issued April 5th, 1869; and on the same day served a copy hereof on the New Orleans, Opelousas and Great Western Railroad Co., by delivering it to A. B. Seger, the president of said company, at their domicil, No. 69 Canal street, in this city.

New Orleans, April 5th, 1869.

(Signed) JOHN FAHY,
D'y Marshal.

Copy of advertisement annexed to the foregoing return on writ of seizure and sale.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

Circuit court of the United States, fifth circuit and district of Louisiana, No. 5788.

By virtue of a writ of seizure and sale to me directed by the honorable the circuit court of the United States for the fifth circuit and district of Louisiana in the above-entitled suit, I will proceed to sell at public auction, at the entrance to the custom-house on Old Levee street, between Canal and Custom-house streets, in the second district of this city, on Tuesday, May 25th, 1869, at 12 o'clock m., the following described property, viz:

The whole of the completed grand division of the railroad be-

468 tween Algiers (opposite the city of New Orleans) and Berwick's Bay, now in full operation, constructed by the said company in pursuance of their charter, and being a distance of eighty miles, together with the road-beds of the main tracks and branches, and also all the depots and lands specially appertaining to them, all the buildings, wharves, and all the equipments and franchises belonging and appertaining to this division of the road, and also all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils, implements, rights of way, and effects generally, of every nature and description whatever, in use upon the said division of the said railroad, or in any wise attached to or appertaining to the same, without any exception or reservation, as per inventory on file in this office, seized in the above suit.

Terms of sale: The sum of six hundred and eighty-six thousand six hundred dollars ($686,600) and costs, payable in cash at the time of adjudication in United States Treasury notes, and the remainder of the purchase price payable on the first day of April, 1889, with interest thereon at the rate of eight per cent. per annum, payable semi-annually on the first day of April and the first day of October of each year.

Cost of deed, internal-revenue stamps, recording, etc., at the expense of the purchaser.

United States marshal's office, New Orleans, April 15th, 1869.

F. J. HERRON,
U. S. Marshal, District of Louisiana.

[Ap. 17, 20, 24, 29; M'y 4, 11, 18, 25.]

Agreement.—Filed November 25th, 1869.

U. S. circuit court.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

It is hereby agreed by and between the counsel for plaintiff and defendants in the above-entitled cause that the transcribing of Exhibit D, filed with and referred to in plaintiff's petition, is dispensed with, the original to be used instead; that the transcribing of document marked A, annexed to and filed with the marshal's return on the writ of seizure and sale, is dispensed with, and that such dispensation shall not effect the completeness of the transcript of record, nor the clerk's certificate thereto.

New Orleans, November 25th, 1869.

(Signed) M. M. COHEN & SON,
For Defendants.

(Signed) MILES TAYLOR,
Attorney for Charles Morgan.

469 *Supplemental petition and order thereon.—Filed April 29th, 1869.*

U. S. circuit court, district of Louisiana.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

To the honorable the circuit court of the United States for the district of Louisiana:

The supplemental petition of Charles Morgan, plaintiff in the above-entitled case, leave of the court being first had and obtained for filing the same, respectfully represents—

That since the order for executory process, to issue in the said case against the said New Orleans, Opelousas and Great Western Railroad Company, to have the said property, subject to the said mortgage consented, stipulated, and contained in the said public act of mortgage, seized and sold according to law for the payment of the whole debt secured by the said mortgage, and to have the price of the said sale payable as follows, to wit: the sum of $606,600, the amount of the said coupons of interest past due and unpaid, as set forth in said petition, for cash; the interest coupons on the said two thousand bonds issued by the said New Orleans, Opelousas and Great Western Railroad Company on the first day of April, 1859, and identified as aforesaid with the said act of mortgage, which were to fall due and become payable on the 1st day of April, 1869, have become due and payable and have not been paid, amounting to the sum of eighty thousand dollars ($80,000) of interest on the first-mortgage bonds, the payment of which was and is now secured by the said mortgage in addition to the said sum of $606,600 before due and unpaid on the said bonds as aforesaid; and that in the premises the sum of six hundred and eighty-six thousand six hundred dollars ($686,600) of the said mortgage debt is now past due and unpaid, and that the price of the sale of the said mortgaged property under the said executory process ought to be made payable, six hundred and eighty-six thousand six hundred dollars ($686,600), the amount of the said coupons of interest past due and unpaid as aforesaid, in cash, and the remainder only payable on the 1st day of April, 1889, with interest thereon at the rate of eight per cent. per annum, payable semi-annually on the 1st day of April and the 1st day of October of each year, on the credit granted by the original contract, as provided for in the said order for executory process.

Wherefore your petitioner prays that the portion of the price of the said sale to be paid in cash at the time of the said sale to be hereafter made according to law under the said order for executory process made herein shall be the sum of six hundred and eighty-six thousand six hundred dollars ($686,600), the amount of the coupons of interest on the said bonds now past due and which are unpaid as aforesaid, and the remainder only payable on the 1st day of April, 1889, with interest thereon as provided for in the order for executory process heretofore granted herein.

(Signed) MILES TAYLOR,
Attorney for Petitioner.

470 *Order.*

Let this supplemental petition be filed, and the prayer thereof granted.

April 20th, 1869.

(Signed) E. H. DURELL, *Judge.*

Petition.—Filed June 1st, 1869.

UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

To the honorable the judges of the circuit court of the United States for the district aforesaid:

The petition of the said New Orleans, Opelousas and Great Western Railroad Company, the defendant named in the proceedings in the cause described in the said title, respectfully shows that the said Charles Morgan obtained from the honorable E. H. Durell, on his petition, an order for executory process upon the statements and the exhibition of evidence filed with the same, as will appear from the petition, order, and evidence remaining of file in the said court.

2. That executory process did issue from the office of the clerk of said court, and was placed in the hands of the marshal of the said court for execution, as will appear upon the papers of record in said court.

3. That notice of the said process was given to the corporation (defendant), and that the said defendant applied to the circuit court to enjoin and restrain the execution of the process, and before the same was executed; but the court, after advising upon the motion for the injunction, on the 24th day of May, 1869, refused the motion, and on the following day the property set forth in the marshal's return of seizure was sold under the order and writ of seizure thereon, and your petitioners, the said corporation, are dispos'essed and disseized of the entire property by an adjudication of the same to the said Morgan, who was the purchaser at the said sale.

4th. The said defendant further shows that since the 25th day of May, 1869, the said marshal has advertised in reference to the adjudication aforesaid, and is proceeding to distribute the price arising from the said sale made by him under the conditions aforesaid, as will appear by his advertisement filed herewith as a part of this petition and marked Exhibit A.

Your petitioners show that the original order of seizure made upon the petition of Charles Morgan by the judge; the issue of the process and the seizure thereon; the refusal of the court to allow of an injunction as to restrain the process in any manner; the sale of the property by the marshal at the time and place upon the advertisements and appraisements aforesaid; and his adjudication of the property to Charles Morgan; and the proceedings to adjudicate upon the distribution of the money arising from the sale, are irregular, illegal, and tend to the wrong and damage of your petitioner.

6th. Your petitioner avers that the order could not have been legally made without notice to the said defendant by proper process;
471 that Charles Morgan did not show such a right as a creditor as to warrant the issue; nor is the order supported by authentic evidence; nor are proper parties made thereto; nor can final process issue from the court before trial, and that all parties in interest in the mortgage should have been made to the same, and that the subject of the suit was only cognizable in chancery, and the execution and sale ought not to have been proceeded with until after the objections set forth in the injunction had been decided, whereas it appears that the the advertisements were made pending that motion, and the sale took place the day following.

Your petitioner prays that your honors would consider of this petition and of the record in the said cause, No. 5788, between the said parties, and the evidence and notices therein, and also the application for injunction and the bill filed, and that the same may be held and taken as a part of this petition, and that your honors would award a writ to the said Charles Morgan, expressing a willingness to hear his complaint, and in order that the validity of the said order for process, the process thereon, the proceedings of said marshal, may be examined and their legality ascertained, and that all proceedings under the same may be suspended and restrained by writ until the final order be made herein, and upon the matter of this petition, and your petitioners will ever pray, etc.

The petitioners submit to the court the records in this court in the cases aforesaid, No. 5788.

(Signed) M. M. COHEN.

CAMPBELL, SPOFFORD & CAMPBELL,
For Petitioner.

Advertisement marked Exhibit A and referred to in the foregoing petition.

U. S. marshal's sales.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

United States circuit court, district of Louisiana, No. 5788.

The property of the New Orleans, Opelousas and Great Western Railroad Company, embraced in and subject to the mortgage granted by the said company, by public act passed before Selim Magner, notary public, in the city of New Orleans, first day of April, 1859, to secure the payment of $2,000,000, with eight per cent. per annum thereon, payable semi-annually on the first day of April and the first day of October in each year, having been sold on the 25th inst., under process in my hands issued out of the circuit court of the United States for the district of Louisiana in the above-entitled case, to satisfy the entire debt due by the said company under the said mortgage, and which debt is represented by 2,000 bonds for $1,000 each, issued by the said company, and identified with the said mortgage by the paraph of the said notary, and by the coupons of interest belonging to the said bonds respectively, and it being the duty of the United States marshal to make a distribution of the price of the said property among the parties holding the

said bonds and coupons in proportion to their respective rights under the said mortgage—

Notice is therefore hereby given to all the holders of the said bonds of the said New Orleans, Opelousas and Great Western Railroad Company, issued by the said company and identified with the said mort-
472 gage and of the coupons of interest belonging to them, respectively, to produce the same to the said marshal on or before the ninth day of June, 1869, in order that he may be informed of the amount of the same, and may be enabled to make a distribution of the proceeds of the said sale pro rata between the holders of the same in proportion to their respective interests in the said mortgage debt.

F. J. HERRON,
Late U. S. Marshal, 79 Custom-house street.

Submission of petition.—Extract from the minutes.

United States circuit court for the fifth circuit and district of Louisiana.
April term, 1869.

NEW ORLEANS.
Tuesday, June 1, 1869.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, district judge.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

The counsel for the defendant this day moved the court to grant the prayer of the petition now presented. Whereupon the court took time to consider.

Rule.—Extract from the minutes of Tuesday, June 1, 1869.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

On motion of Miles Taylor, attorney for Charles Morgan, the plaintiff, it is ordered that the New Orleans, Opelousas and Great Western Railroad Company show cause on Tuesday, the 8th inst., at 11 a. m., why said company shall not forthwith furnish to F. J. Herron, late U. S. marshal, and now acting in the capacity of marshal in said case, a statement of the number of bonds issued by said company and now outstanding, and a statement of the number of coupons belonging to the said bonds which have been paid or extinguished by the said company, and showing the number of the said bonds to which they belonged, and the numbers on the said coupons respectively, showing the dates at which they respectively matured, certified under the seal of the said company, and verified by the oaths of the president and secretary of the said company on the grounds filed.

Marshal's return.

Received June 2, 1869, by the U. S. marshal, and on the same day of June, 1869, served copy of within rule on New Orleans, Opelousas and Great Western Railroad Company named herein, by leaving same
473 in hands of A. B. Seger, president of said company, at office, 69 Canal street, in this city.

New Orleans, June 3, 1869.

(Signed) S. W. REED,
D'y U. S. Marshal.

Rule and grounds.—Filed June 1, 1869.

United States circuit court, district of Louisiana.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

On motion of Miles Taylor, of counsel for Charles Morgan, the plaintiff in the above-entitled case, and on giving the court to understand and be informed that a sale was made on the 25th day of May, 1869, of the whole of the contemplated grand division of the railroad between Algiers (opposite the city of New Orleans) and Berwick's Bay, constructed by the said New Orleans, Opelousas and Great Western Railroad Company, in pursuance of their charter, together with the railroad beds of the main tracks and branches, and also all the depots and lands specially appertaining to them, all the buildings, wharves, and all the equipments and franchises belonging and appertaining to the said division of the said road, and all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils, implements, rights of way, and effects generally of every nature and description whatsoever in use upon the said division of said railroad, etc., under process issued out of this honorable court in the said case, to satisfy the whole of the debt then due and owing by the said New Orleans, Opelousas and Great Western Railroad Company, the payment of which was secured by a certain mortgage granted by the said company by public act passed before Selim Magner, a notary public in the parish of Orleans, on the 1st day of April, 1859, on the said property sold as aforesaid, on the said 25th day of May, 1869, which said debt, as described in the said act of mortgage, amounted to the sum of two millions of dollars ($2,000,000.00) bearing interest, at the rate of eight per cent. per annum, payable semi-annually on the 1st day of October, 1859, and on the 1st day of April and the 1st day of October, 1860, and in each and every year thereafter until the 1st day of April, 1889, when the principal of the said debt became due, and which said debt was represented by 2,000 bonds, issued by the said company for $1,000 each, and by sixty coupons of interest attached to and belonging to each bond for the sum of $40 each, and numbered from 1 to 60, and falling due, respectively, in the order in which they were numbered on the 1st day of October and of April in each of the years from the date of the said mortgage act, and up to the 1st day of April, 1889;

And on further giving the court to understand and be informed that from and after about the year 1861 the said company failed to pay the said coupons of interest with any regularity, and that a very large num-

ber of coupons representing the interest of the said debt, and the payment of which is secured by the stipulations contained in the said act of mortgage in the same manner as the principal of the debt, and which fell due in the years 1862, 1863, 1864, 1865, 1866, 1867, 1868, and 1869, are still due and unpaid by the said company;

474 And on further giving the court to understand and be informed that to enable the officer into whose hands the price of the said sale is placed to be distributed among the holders of the said bonds and the coupons of interest pro rata (the proceeds of the said sale not being sufficient to pay the said mortgage debt in full), it is necessary for the said officer to ascertain the number of the said bonds issued as aforesaid by the said company which are now outstanding; and also to ascertain what coupons of interest which are now past due have been paid by the said company, in order to enable him to know the existing amount of the said mortgage debt, and to put him in condition to prepare a tableaux showing the disposition and distribution to be made of the proceeds of the said sale among the holders of the said bonds and interest coupons, to be laid before the court to aid it in making a proper distribution of the same;

And on further giving the court to understand and be informed that the said company has a record showing the number of the said bonds issued and now outstanding, and a record also of the coupons of interest belonging to the said bonds which have been paid by the said company and are now extinguished and ought to be cancelled;

And on further giving the court to understand and be informed that F. J. Herron, late marshal of the United States for the district of Louisiana, and now acting in the capacity of marshal in the said case, has applied to the said company for a statement, by the proper officer of the said company, of the number of the said bonds issued by the said company and now outstanding, and for a statement also of the coupons of interest belonging to the said bonds which have been paid by the said company, and that the said company has refused to furnish him, the said acting marshal, in his official capacity:

It is ordered that the said New Orleans, Opelousas and Great Western Railway Company show cause on Tuesday, the 8th day of June, 1869, at 11 o'clock a. m., why the said company shall not forthwith furnish to the said F. J. Herron, in his said capacity, a statement of the number of the said bonds issued by the said company and now outstanding, and a statement of the number of coupons belonging to the said bonds which have been paid or extinguished by the said company, and showing the number of said bonds to which they belonged, and the numbers on the said coupons respectively, showing the dates at which they respectively matured, certified under the seal of the said company, and verified by the oaths of the president and secretary of the said company.

Objections to motion made an 1st June, 1869.—*Filed June* 8, 1869.

United States circuit court, district of Louisiana.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

And into court, by the undersigned, his counsel, comes Charles

Morgan, and in opposition to the motion to grant the prayer of the petition presented to the court on or about the 1st day of June, 1869, and of which notice was received by the said Charles Morgan, through his counsel, on the 7th day of June, 1869, says:

First. That the allegations made by the defendants in their said petition (a copy of which, signed by M. M. Cohen, and Campbell,
475 Spofford & Campbell, for the said defendants, was left at the office of the undersigned, counsel of the said Charles Morgan, and is now in his possession), under Nos. 1, 2, 3, 4, 5, 6, as to the validity of the order for process in the said above-entitled case, and of the process itself, and of the proceedings under the same, up to the sale and adjudication of the property seized under the said process, are in substance the same with those made by the said defendants in their bill filed on the chancery side of the court in the cause entitled "The New Orleans, Opelousas and Great Western Railroad Company vs. Charles Morgan," number 5817 of the docket of the court, wherein they prayed for an injunction to enjoin and restrain the said Charles Morgan from proceeding with the process granted in the above-entitled case; that after a hearing of all the said matters and things, upon the motion for an injunction to issue upon the allegations contained in the said bill filed as aforesaid, the said injunction was referred to, and that in point of fact, so far as the said petition contains allegations touching the validity of the order for process in this case, and of the process itself, and of the proceedings under the same, up to the sale and adjudication of the property seized under the said process, it is an attempt to obtain an injunction in an irregular and informal manner, and in a way unknown to our law, upon the same grounds which were declared by a decree of this court rendered on the 24th day of May, 1869, to be altogether insufficient; and

Second. That as the remaining matter set forth in the said petition, to wit, that the marshal has published a notice calling on the holders of the bonds and coupons of interest belonging to the same, issued by the said defendants, to produce the same to him in order that he may be informed of the amounts of the same, and may be enabled to make a distribution of the proceeds of the sale of the said property pro rata between the holders of the same, he further says there is no foundation in law for the application made by the defendants in the said petition to have the proceedings of the said marshal suspended in the premises, inasmuch as the said marshal is now engaged, under the authority of law, in ascertaining the amounts now due on the said mortgage debt, and who are the holders of the same, in order that he may be enabled to present to the court a tableau of distribution showing the amount of the proceeds of the sale of the said property which is to be allotted or apportioned to each bond and interest coupon issued by the said defendants which are now outstanding and due, and after legal proceedings had thereon to obtain the authority of the court to pay the amounts due on the same respectively to the holders of the said bonds and coupons, in execution of the process of the court now in his hands. And the said Charles Morgan says further, in opposition to the said motion, that the said defendants have no right to interfere with the execution of the process of the court in the above-entitled case in the way and manner proposed, and that the intent and design of the said defendants in the said petition is to prevent the said marshal from getting the information necessary to enable him to discharge his duty and to present a tableau of distribution to the court for its final order thereon, as will more fully appear from the refusal, which he is ready

to prove, of the said New Orleans, Opelousas and Great Western Railroad Company to furnish the said marshal with a statement of the said bonds now outstanding and of the interest coupons belonging to the said bonds respectively which have been paid by said company.

(Signed) MILES TAYLOR,
Solicitor.

476 *Judgment on petition submitted by defendants.—Extract from judgment docket.*

United States circuit court, fifth circuit and district of Louisiana.
April term, 1869.

NEW ORLEANS, *Monday, June* 14, 1869.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, district judge.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company. } No. 5788.

The court having duly considered the petition and exhibits submitted by the petitioner in this cause, and being satisfied that the prayer thereof cannot be granted, it is ordered and decreed that the said petition be dismissed, with costs.

Judgment rendered June 14, 1869. Judgment signed June 18, 1869.

(Signed) E. H. DURELL, *Judge.*

Motion and order: Rule of June 1, 1869, *reassigned.—Extract from the minutes of Tuesday, June* 15, 1869.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company. } No. 5788.

On motion of Miles Taylor, attorney for the plaintiff, ordered that the rule of first instant be renewed and assigned for Friday, eighteenth instant, at 11 a. m., and that defendant be notified hereof.

Marshal's return.

Received June 16, 1869, by the U. S. marshal, and served copies of the within as follows: June 16, 1869, one on J. M. Spofford, 27 Commercial place; other June 16, 1869, on M. M. Cohen personally, at 30 Camp street, New Orleans.

(Signed) S. W. REED,
Dy U. S. Marshal.

Answer to rule of June 1, 1869.—*Filed June* 18, 1869.

Circuit court of the United States, district of Louisiana. April term, 1869.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company. } No. 5788.

This respondent, being served with the rule of the plaintiff of
477 the first June instant, protests against any order or judgment in the said suit, or any order recognizing that there was a valid sale of the property described in the motion, and against the jurisdiction of this court in this behalf, for the following reasons:

1. That it does manifestly appear that one of the judges aforesaid did make, upon the petition of Charles Morgan, the plaintiff, an order for the seizure and sale of the property of your petitioner, without any citation being made, or other process from this court being issued, to show any cause or opposition to the order, and that upon evidence that was not authentic, and which this respondent had no opportunity to countervail or contradict.

2. That the said Charles Morgan, by that petition, contrary to his social right and duty, did commence the suit ex parte, and did obtain the order of seizure and sale, and has executed the same without joining any creditor by bonds under the same instrument, although he had exact knowledge that he was not the only creditor under the mortgage he has assumed to control.

3. That your respondents, being informed by a notice from the marshal of his purpose to seize and sell the said property, did apply to the circuit court for an injunction upon a bill filed by your respondents in the said circuit court, wherein your respondents set forth at large their opposition to the order, the proceedings under it, and the jurisdiction over the same, and the prosecution of it, and the court did, on the 24th April, 1869, only one day before the sale, refuse said motion; but although the said application had been pending from the day of the filing of the bill till the 24th of April, the said Morgan did cause the sale to be made the following day, to wit, the 25th April, 1869, as stated in the motion.

4. The respondents aver that the notices of sale were not sufficient and the advertisements incomplete and not in accordance with the Code of Practice, and that the appraisements were insufficient, and that the sale by the marshal is illegal and cannot be supported, because of the failure to advertise, appraise, and give the suitable notices.

5. Your respondents aver that the most manifest irregularity and illegality in the proceedings of the said Charles Morgan is made apparent by this rule. The property in which creditors are interested has been sold and conveyed to one of the said creditors, and the said plaintiff and the marshal are compelled to make inquiry whose property they have thus appropriated by judicial process.

The respondents respectfully ask the court to examine on this motion the proceeding in the cause aforesaid, and the bill for the injunction filed on behalf of the respondents, the objection to the process and the execution of the same, as testimony, as well as records in the cause; and that your honor, after examination of the objection and complaint of these respondents, would set aside the original order of seizure and

sale as having been illegally and improvidently granted, and all the subsequent proceedings thereon. That if your honor should decline to rescind the order of seizure and sale, that then that your honor would order that the sale be set aside, and all the proceedings under it be cancelled for the irregularities in the same.

These respondents protest that they have no interest in the distribution of the moneys, and that their title is to a restitution of the property; but they respectfully submit to the court that the marshal who made the sale has been removed from office, and that his successor is fulfilling his functions, and was so at a date prior to the sale, and that the magnitude of the cause and the number of persons con-
478 cerned in the funds render it proper to enforce the thirty-fifth and thirty-sixth rules of this court against the ex-marshal who made the sale, by which all the moneys received by the officers, and persons acting as officers thereof, arising from the sale of property in pursuance of any order or decision of the court shall be paid into court by the marshal. That the court would direct suitable inquiries, through a proper officer of the court, as to the mode of distribution and the persons entitled, and that the ex-marshal be discharged from further duty; and these defendants respectfully say that they are not amenable to such an order as is proposed in the motion of the said plaintiff.

(Signed) M. M. COHEN AND
CAMPBELL, SPOFFORD & CAMPBELL,
For the N. O., O. and G. W. R. R. Co.

Order: Rule of June 1, 1869, *made absolute.—Extract from the minutes of Friday, June* 18, 1869.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

The rule of first June came up—Miles Taylor for plaintiff in rule; M. M. Cohen for defendant—when, after hearing answer to the rule and argument thereon, it is ordered that the rule be made absolute, and that the New Orleans, Opelousas and Great Western Railroad Company furnish forthwith to F. J. Herron, acting in his capacity of late marshal, a statement of the number of bonds issued by the said company and now outstanding, and a statement of the number of coupons belonging to said bonds which have been paid or extinguished by the said company, and showing the number of said bonds to which they belonged, and the numbers on said coupons respectively, showing the dates at which they respectively matured, certified under the seal of the said company and verified by the oaths of the president and secretary of the said company.

Motion and order to withdraw bonds and interest coupons.—Extract from the minutes of Tuesday, June 29, 1869.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

On motion of Miles Taylor, of counsel for Charles Morgan, it is or-

dered that the said Charles Morgan have leave to withdraw the bonds and coupons as described in book on file in the cause, Exhibit D, on giving a receipt for the same, endorsed or written on the said Exhibit D, on the grounds filed.

479 *Motion for leave to withdraw bonds and interest coupons.—Filed June 29, 1869.*

United States circuit court, district of Louisiana.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

On motion of Miles Taylor, of counsel for Charles Morgan, and on suggesting to the court that the mortgaged property described in the petition has been sold under the process of the court to satisfy the mortgaged debt as prayed for, and the marshal being now about to make a distribution of the proceeds of the said sale, and of whatever realized under the said process, it is now necessary for the said Charles Morgan to withdraw the bonds and coupons of interest in the possession of the court in the said cause, as evidence on which the said process was granted, in order that he may present them to the said marshal, so as to have the portion of the said proceeds of the said sale, etc., paid to him and applied in part payment of the same:

It is ordered that the said Charles Morgan have leave to withdraw the said bonds and coupons as described in book on file in the case as Exhibit D, on giving a receipt for the same, endorsed or written on the said Exhibit D.

Petition for writ of error and order thereon.—Filed June 30, 1869.

THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

CHARLES MORGAN, PLAINTIFF,
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD CO., DEFENDANTS. } No. 5788.

To the honorable the judges of the said circuit court:

The defendants, the New Orleans, Opelousas and Great Western Railroad Company, in the suit aforesaid, being aggrieved by the judgment in the cause aforesaid, respectfully pray that the said court may allow a writ of error to the next term of the Supreme Court of the United States, to sit at Washington City on the first Monday of December next, and that the record, proceedings, orders, and judgments in the said cause may be certified to the said court according to law. That citation may issue to the said plaintiff, the defendants offer to give bond, with sureties, for the prosecution of their writ.

(Signed) M. M. COHEN,
For Defendants.

Order.

A writ of error is allowed in this case as prayed for and according to law, returnable to the Supreme Court of the United States on the first Monday of December next, petitioners giving bond in the sum
480 of five hundred dollars, with good and solvent security, conditioned as the law directs.

June 30, 1869.

(Signed) E. H. DURELL, *Judge.*

Bond for writ of error.—Filed July 8, 1869.

Know all men by these presents that we, the New Orleans, Opelousas and Great Western Railroad Company, as principal, and Samuel Smith, as surety, are held and firmly bound unto Charles Morgan in the full and just sum of five hundred dollars, to be paid to the said Charles Morgan, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this seventh day of July, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas, lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit pending in said circuit court, wherein Charles Morgan was plaintiff and the New Orleans, Opelousas and Great Western Railroad Company was defendant, judgment was rendered against the said New Orleans, Opelousas and Great Western Railroad Company, defendant, and the said New Orleans, Opelousas and Great Western Railroad Company having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Charles Morgan, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such that if the said New Orleans, Opelousas and Great Western Railroad Company shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) A. B. SEGER, *President.* [L. S.]

" SAM. SMITH. [L. S.]

Sealed and delivered in the presence of—

(Signed) M. M. COHEN.

United States circuit court.

THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company *vs.* CHARLES MORGAN. } No. 5817. In chancery.

RECORD IN ABOVE CAUSE REFERRED TO IN THE PETITION OF DEFENDANTS.—FILED AND SUBMITTED JUNE 1ST, 1869.

Bill.—Filed April 5th, 1869.

To the honorable the judges of the circuit court of the United States for the district of Louisiana:

The New Orleans, Opelousas and Great Western Railroad Company, a corporation existing by the laws of Louisiana, and domiciled in the city of New Orleans, bring this their bill against Charles Mor-
481 gan, a citizen of the State of New York, found in New Orleans, in the district of Louisiana.

And thereupon your orators complain and say that by an act of the legislature of the State of Louisiana, which became a law the 22d April, 1853, they were recognized as a body corporate under an act to provide for the organization of corporations, March 11th, 1852, their association adopted, and their powers, privileges, and rights enlarged; and that, by a number of the acts of the legislature, they have since that time been treated as a corporation; aid has been extended to them by the State to aid their enterprise; and the city of New Orleans, under their authority, has subscribed for their stock; public lands have been granted to them, and authority conferred upon them to borrow money, to mortgage their rights, estates, and privileges for the payment thereof, and to issue bonds with coupons attached, the interest to be paid in New Orleans, New York, or London, at their election; and to do other acts for the advancement of their undertaking, as described in their act of incorporation. All of which will more fully appear by a reference to the public acts of the legislature, to which your orators crave reference as a part of their bill, as well as to those acts which refer to the company alone.

Your orators further complain and say that, under those powers, your orators, in the year 1859, caused to be prepared two thousand bonds for one thousand dollars each, payable to E. J. Forstall, at that time and now a citizen of the State of Louisiana, and a resident in New Orleans, and then and there made a contract with the said E. J. Forstall for the security of the same and for the indemnification of the holders of the said bonds, a printed copy whereof is hereunto attached, marked "A," as an exhibit to this bill, and which your orators pray may be taken as a part hereof.

Your orators further complain and say that, under the said mortgage, the bonds were placed in the markets of New York, London, and New Orleans, and elsewhere, and above nineteen hundred of the same are in circulation among a great number of holders, who reside in Louisiana and other parts of the United States, and some of whom are beyond the limits of the United States, and subjects of foreign states in conditions of friendship with the United States.

4. Your orators further complain and say that one Charles Morgan, who claims to be a citizen of New York, but whose residence and busi-

ness are, for a portion of the year, in the city of New Orleans, has appeared before one of your honors with a petition, in which, after representing the facts of the incorporation of your orators, and the mortgage and issue of bonds under the same, as aforesaid, avers that he is the holder of eight hundred and forty (840) of the said bonds; and that he is the legal holder of three thousand six hundred and twenty-five (3,625) coupons of forty dollars each, which are past due and unpaid; and that he holds besides four thousand two hundred and ninety-six (4,296) which belonged to and were attached to other bonds issued by the said company, under the mortgage aforesaid, and detached therefrom, and which said bonds, he affirms, bear the notarial mark of ne varietur, but which fact he has not authenticated by the production of the bonds themselves; nor is there any mark alleged *alleged* to exist on the said last-mentioned coupons, nor is there in fact any mark on said coupons, nor notarial identification on them as coupons at all, subjecting them to the operation of the mortgage in a suit of this description.

5. Your orators further complain and say that the said Charles Morgan in his petition represents that there are fifteen thousand four hundred and sixty-five coupons unpaid, and has filed, as evi-
482 dence, a report of the company making a debt due of six hundred and six thousand six hundred dollars ($606,600), and, assuming to represent the creditors of the corporation, has applied to the court for a summary order of seizure and sale of the property of the corporation, for the amount of the supposed debt, without production of other evidence than he has submitted as aforesaid, or authority for his action. No bonds or coupons have been filed or exhibited except those which he holds himself with his petition; nor is the name of any holder stated or suggested.

6. Your orators further complain and say that the judge of the court has issued an order of seizure and for the sale of the property described in the mortgage, unless the defendant shall pay to the plaintiff the debt aforesaid claimed by him, upon the evidence thus set forth; and in case of default, that the property shall be sold for the payment in cash of the ($606,600) sum which the petitioner alleges to be the outstanding debt of unpaid coupons, nearly one-half of which ($289,760) he does not represent and does not hold; and the authentic evidence of which he has not exhibited comformably to the law of the procedure he has adopted.

7. Your orators further complain and say that they have had no other notice of the proceedings aforesaid than of the fact of the seizure and proposed execution of the order. The petition has not been served upon them with any citation to make an answer thereto; and the order does not purport to be a judgment of the court ascertaining debt and default of payment, but is a complete and perfect authority to the marshal to sell; all of which will manifestly appear by reference to the proceedings in the said cause, which are on file among the records of this court, and to which your orators crave reference, in the same manner as if they were represented and set forth in this bill as an exhibit to the same.

8. And your orators further complain and say that they have been advised that the process adopted by the defendant in this cause is illegal and unjust; that every holder of the bonds of the said company has an equal right to that of the plaintiff in the mortgage aforesaid, and a right to examine into, and inquire into, the authenticity and validity of the claims of the plaintiff, and to propound his own claims,

and to be heard by the court as to the manner of selling and dealing with the said property, and that no disposition of this common and social right should be made until all the holders of the bonds have been made parties, or are properly represented in court.

9. And your orators further complain and say that by the acts of Congress no suits can be made in the circuit court of the United States unless process be served on the party, and that no process has issued in this cause.

10. And your orators further complain and say that, under the acts of Congress, the circuit court of the United States can have no cognizance of any suit to recover the contents of a mortgage, in favor of any assignee, unless his assignor could maintain the suit, and that it appears on the face of the mortgage that the claim of the said plaintiff under his mortgage is derived from the acceptance of the same, and subrogation of his right therein by E. J. Forstall, who then was, and from thence hitherto has been, and now is, a citizen of the State of Louisiana, and that there is not upon the petition or other proceedings of the said Charles Morgan any averment to the contrary hereof, and no averment of the fact of the citizenship of said E. J. Forstall.

11. Your orators further complain and say, that by the Constitution of the United States, the judicial power of the United States is vested in courts wherein cases of law and equity may be decided, ac-
483 cording to due cause of law or equity; that the enforcement of a security like the present is a proceeding cognizable only in a court of equity, and that the number of the persons interested, the extent of the interests involved, the nature of the property mortgaged, and the magnitude of the property and of the incumbrances, make it a case appropriate only to an equitable tribunal; that the modes of proceeding at law are unfitted for the determination of the rights involved, and for the disposition of the estate, and that the proceedings adopted by the said defendant is not appropriate nor suited to the case, nor consistent with the laws of the United States.

12. Your orators further complain and say, that the property subject to the operation of this process is estimated to be worth about three millions of dollars, and consists of a railroad and its equipments, that on a sale upon thirty days' notice the same cannot fail to be sacrificed; that the process being of doubtful legality, the jurisdiction of the judge to order it being unsettled by decision, and the uncertainties attending it, would operate to depress and diminish the value of the property sold.

Your orators further say that the effect of the seizure has been pernicious, and that the interests of all parties require that the sale, if one be required, shall take place in the orderly and regular course of judicial procedure in equity.

13. Your orators further complain and say, that even if the mode of procedure adopted by defendants is allowable, under any conditions, in the courts of the United States for Louisiana, it is not proper under the conditions of this case. Many of the creditors of the company reside in Europe; others in different parts of the United States. The corporation is indebted to others upon a second mortgage and upon account; the property of the corporation is not of a nature to obtain purchasers readily. There is a necessity for concert, co-operation, and interview among creditors.

There are public and private interests involved in the daily operations of the road. The public considerations that prevented Congress from making railroads subject to bankrupt laws apply with tenfold force to making them subject to the abnormal proceedings known in

Louisiana as executory process, a proceeding coming as an inheritance from Spain, and which, in its nature and application, is contrary to the procedure of courts of law and equity which the framers of the constitution of the United States contemplated as repositories of their judicial power.

Your orators aver that the said Charles Morgan is a capitalist, and has purchased a large amount of the debt of the corporation, under the depressed circumstances of the corporation since the termination of the war; that these depressed circumstances are owing to political and public conditions that were not under the control of the corporation, or of its managers. But neither the amount of his securities nor the circumstances of his purchase give to him any interest in the mortgage above that of other holders of bonds. He is a partner, and his obligation and duty are to preserve with fidelity the social claims of every other bondholder. But such a sale as is contemplated would give to him an advantage for his capital and the amount of his debt, that no other creditor would have at the sale, and, if he be disposed, to enable him to buy the effects of the corporation at a price, compared to their value, which would be nominal, and thus give to him a leonine control of the liquidation of the partnership interests.

Your orators further complain and say, that the stockholders have interests which should also be regarded, and no sale should be made which did not present favorable conditions for obtaining a full
484 value of the property; that the State of Louisiana and city of New Orleans are stockholders under the acts of the legislature before referred to. To the end, therefore, that the said Charles Morgan may be made a party to this bill, and that he may make an answer to the same, and especially that he may answer the charges and allegations of the same as if they were repeated, and he distinctly interrogated thereto; and your orators pray that the said Charles Morgan be enjoined and restrained from proceeding with his executory process, and that the advertisement of sale be prevented, and that the seizure be set aside, and that the said Charles Morgan be required to file a bill on the chancery side of this court, if he proceeds further, to which all the mortgage creditors, together with your orators, may be made parties or be represented.

And your orators pray that the court may make suitable orders for the protection of the property of the corporation from seizure, and that its operations be regulated, if continued under seizure; and that such other and further relief be granted as may be consistent with equity and good conscience.

(Signed) M. M. COHEN, *Solicitor.*

Circuit court of the United States, district of Louisiana.

Before me, clerk of the circuit court aforesaid, comes A. B. Seger, president of the said corporation, who maketh oath and saith that the bill filed by said corporation in said court is true in substance and matter of fact.

(Signed) A. B. SEGER.

Sworn to and subscribed before me this 5th April, 1869.

(Signed) D. URBAN, *Clerk.*

Exhibit marked "A," referred to in and filed with the foregoing bill.

STATE OF LOUISIANA.
City of New Orleans.

Be it known that this day, before me, Selim Magner, a notary public in and for this city and parish of New Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared William G. Hewes, esq., of this city, president of the New Orleans, Opelousas and Great Western Railroad Company, a duly incorporated institution of this State, and herein acting in his said capacity, by virtue and in pursuance of the resolutions of the board of directors of said company, passed on the seventeen day of March, eighteen hundred and fifty-nine, which resolutions, duly certified copies whereof are hereunto in the margin annexed for reference, are in the words and figures following, to-wit:

1. Resolved, That for the purpose of obtaining means for the further construction of the road, the president be, and he is hereby, authorized and instructed to issue two thousand bonds of the New Orleans, Opelousas and Great Western Railroad Company, dated first April, 1859, redeemable on the first April, 1889, for one thousand dollars each, bearing interest at the rate of eight per cent. per annum, payable semi-annually, in coupons attached to said bonds of eight pounds five shillings sterling, or forty dollars each, the principal of said bonds being made payable at their office in New Orleans, and the interest thereof
485 being made payable in New Orleans, New York, or London, as the president, by his endorsement, may determine.

2. Resolved, That the president be further authorized and instructed to secure the payment of said bonds, and the interest thereon, by a first mortgage on the first grand division of the railroad of the company from Algiers, opposite the city of New Orleans, to Berwick's Bay, together with the land over which said road is constructed, the equipments, appurtenances, rights, and franchises of the company, applicable to this portion of the road.

3. Resolved, That such an amount of money as may be necessary to meet each semi-annual interest of the outstanding bonds of the company shall be provided for, pro rata, by monthly deposits in the Louisiana State Bank of this city, and entered as follows: "The New Orleans, Opelousas and Great Western Railroad Company's interest account;" and all funds so deposited shall be considered special, and shall not be used for any other purpose than for the payment by said bank of running interests on the bonds of the company, as maturing. And the president is hereby authorized to sign an act of agreement with the president of said bank, binding the company as aforesaid.

4. Resolved, That in case the Louisiana State Bank should decline to continue to be the agents of said New Orleans, Opelousas and Great Western Railroad Company, or in case the charter of said bank should expire, then the president of this company shall choose any other of the chartered banks in this city for the carrying out of the purposes of these resolutions.

Which said appearer declared, that in pursuance of the above recited resolutions, and also by virtue of the authority conferred upon said company by, first, the ninth section of an act of the legislature of the State of Louisiana, entitled "An act to incorporate the New Orleans, Opelousas and Great Western Railroad Company," duly approved on the twenty-second day of April, 1853, [No. 149;] and, second, by another act of the same Legislature duly approved on the twentieth day

of March, 1856, entitled "An act to extend the powers of railroad companies," [No. 194,] he has in his capacity aforesaid this day issued two thousand bonds of the New Orleans, Opelousas and Great Western Railroad Company, signed by him, and by Benjamin F. Flanders, treasurer of said company, redeemable on the first day of April, eighteen hundred and eighty-nine, for the sum of one thousand dollars ($1,000) each, bearing interest at the rate of eight per cent. per annum, payable semi-annually, in coupons of forty dollars, or eight pounds five shillings sterling each, the principal of said bonds being made payable at the office of the company, in the city of New Orleans, and the interest coupons in New Orleans, New York, or London, as he, the said president, may, by his endorsement, provide, and all which bonds have been severally marked "ne varietur," and countersigned by me, the said notary, for the purpose of more effectually identifying the same herewith.

Now, therefore, in consideration of the premises, and in order to secure the full, faithful, and punctual payment, and the redemption of each and all the said bonds (this day issued as aforesaid) to any future holder or holders thereof, and to each and every one of them, when the same shall become due and payable, together with the interest accruing thereon, in the manner and at the periods of time hereinabove stipulated, as evidenced by the coupons attached to the said bonds respectively, payable on the first days of April and October of each year, the said "New Orleans Opelousas and Great Western Railroad Company" do, by these
486. presents, by their president, (the said William G. Hewes), grant in favor of E. J. Forstall or bearer, as well as in favor of all and every person and persons whomsoever who may become the holder or holders of said bonds or coupons, or any of them, a first mortgage lien or privilege upon the whole of the completed grand division of the railroad between Algiers (opposite the city of New Orleans) and Berwick's Bay, now in full operation, constructed by the said company in pursuance of their charter, and being a distance of eighty miles, together with the roadbeds of the main track and branches, and also all the depots and lands specially appertaining to them; all the buildings, wharves, and all the equipments and franchises belonging and appertaining to this division of the road, herein mortgaged and referred to, and also all and singular the cars, locomotives, engines, wagons, machinery, fixtures, implements, utensils, rights of way, and effects generally, of every nature and description whatsoever, in use upon the said division of the said railroad, or in anywise attached to or appertaining to the same, without any exception or reservation as well as all such as shall or may hereafter at any time be placed upon or attached to the said division of the said railroad, whether for the purpose of replacing others removed therefrom, or from any other cause whatsoever, the said company promising, by their said president, not to alienate nor encumber, nor in anywise affect the same, or any part or portion thereof, to the prejudice of these presents.

By reference to the annexed certificates of the recorders of mortgages in and for the parishes of Orleans, Jefferson, Saint Charles, La Fourche Interior, Assumption, Terre Bonne and St. Mary, respectively traversed by the said division of the said railroad herein mortgaged, it will appear that there exists no mortgage or encumbrance whatsoever inscribed against the said division of the said railroad, franchises and appurtenances, nor upon any of the lands or property connected therewith owned by the said company.

And now personally came and appeared the said Edmond J. Forstall, who, after having read the foregoing act of mortgage, declared that he does, by these presents, accept the same, as well for himself as for all and every other person or persons who may hereafter become the purchaser or purchasers, assignee or assignees, holder or holders, of the said bonds or any number thereof, or any of them, together with all the rights, privileges and benefits thereto belonging or in anywise appertaining.

Thus done and passed in my office, at the said city of New Orleans, in the presence of Edward G. Gottschalk and Forestier Brugier, witnesses, of lawful age, domiciliated in this city, who hereunto subscribe their names, together with the said parties and me, the said notary, on the first day of April, in the year of our Lord one thousand eight hundred and fifty-nine.

(Signed) WILLIAM G. HEWES, *President.*
" EDMOND G. FORSTALL.
" E. G. GOTTSCHALK.
" F. BRUGIER.
" S. MAGNER, *Not. Pub.*

STATE OF LOUISIANA,
City of New Orleans:

Be it known that this day, before me, Selim Magner, a notary public in and for this city and parish of New Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared Will-
487 iam G. Hewes, esq., of this city, president of the New Orleans, Opelousas and Great Western Railroad Company, a corporation duly organized under the laws of this State, herein acting in his said capacity by virtue of a resolution of the board of directors of said company passed at their meeting of the 17th March, 1859, a certified copy of which resolution is annexed in the margin hereof for reference, of the one part, and Edmond J. Forstall, esq., of this city, of the second part; and the said Hewes declared that, whereas the said company executed a mortgage on the railroad of said company, its property, rights, privileges, franchises, and appurtenances, as a security for the payment of two thousand bonds of one thousand dollars each, issued by said company, and payable thirty years from this date, with interest at eight per cent. per annum, payable semi-annually on the first day of April and the first day of October of each year, as per act passed before the undersigned notary on the date hereof, which mortgage was made in favor of him, the said E. J. Forstall, and any future holder or holders of said bonds, and was intended to enure to the benefit of any such holder or holders of said bonds, or any of them, as might at any time become beneficially interested in the security of such mortgage.

Now, therefore, in order to further secure the punctual payment of the interest of said bonds, represented by coupons attached thereto, payable semi-annually, and in order to facilitate their negotiability by furnishing guaranties of the punctual payment of said interest, the said company, in pursuance of said recited resolutions of the board of directors, does hereby contract and agree with said E. J. Forstall, herein acting not only for himself, but in the interest of all persons who may be or become beneficially interested in the said bonds, each and every one of whom he subrogates in and to all his rights and actions under said act of this date, and under the present act, up to the amount of the interest of each and every one of said persons respectively, as follows, to wit:

1st. That the treasurer of the said company for the time being, or any

other officers discharging the duties of treasurer, shall, on the last day of April next, and on the last day of every month until the final payment of said bonds, deposit in the Louisiana State Bank of this city, pro rata, an amount of money necessary to meet each semi-annual interest of the outstanding bonds of the company, to be entered as the "New Orleans, Opelousas and Great Western Railroad Company's interest account," and such additional amount as may be necessary to pay exchange and other expenses of placing funds at the place where the interest coupons may be payable; and the money thus deposited shall not be withdrawn by the said company or any officer thereof, but shall remain on deposit in said bank, and be by said bank exclusively applied to the payment of the interest coupons on said bonds and said expenses and exchange; and no payment shall be made by said bank out of said deposits, on the check of any person or persons whomsoever, but the payments out of said deposits shall be made on presentation of said coupons as above provided, which shall be cancelled on payment and delivered by the said bank to the treasurer, taking his receipt therefor, provided, that the said bank shall remit funds to meet at maturity all of said coupons payable in London or New York.

2d. That the said company shall have the right to select any of the chartered banks in this city for the purposes aforesaid, in case the charter of the Louisiana State Bank should expire prior to the payment of the interest coupons aforementioned, or in case the said bank should decline to continue said deposits before the time contemplated.

And to these presents personally came and appeared and intervened Jean Martial Lapeyre, esquire, president of the said Louisiana State Bank, and acting herein by virtue of a resolution of the board of directors of the said bank, passed at their meeting of the 18th of March, 1859, a certified copy whereof is hereto annexed, who declared that the president, directors and company of said bank do hereby take cognizance of the present act, and agree to receive and keep the above-mentioned deposits, and make the payments therein provided out of the same, in conformity hereto; provided, that should said bank decline to continue this arrangement, it shall be at liberty to do so after giving six months' notice to said railroad company; and the board of directors of said railroad company shall thereupon select another incorporated bank of this city to become the depositary of the funds under this act, which bank shall assume all the obligations herein imposed on the Louisiana State Bank; and shall be entitled to exact the performance of all those imposed on the said company, its directors or officers.

Thus done and passed in my office, at the said city of New Orleans, in the presence of Edward G. Gottschalk and Forester Brugier, witnesses of lawful age, domiciliated in this city, who hereunto sign their names, together with the said parties and me, the said notary, on this first day of April, in the year of our Lord one thousand eight hundred and fifty-nine.

(Signed) WILLIAM G. HEWES, *President.*
" EDMOND J. FORSTALL.
" J. M. LAPEYRE, *President.*
" E. G. GOTTSCHALK.
" F. BRUGIER.
" S. MAGNER, *Not. Pub.*

Extract from the minutes.

LOUISIANA STATE BANK,
March 18, 1859.

Whereas the New Orleans, Opelousas and Great Western Railroad Company have selected this bank as the depositary of certain moneys for the purpose of paying the interest-coupons attached to certain mortgage bonds to be issued by said company, and to be secured by special mortgage by a notarial act:

Resolved, That this bank accept of this deposit in accordance with the resolutions of the board of directors of the said company passed on the 17th day of March, 1859, and the president is hereby authorized to sign a contract with said company to that effect; provided, that should the bank decline to continue this arrangement before the expiration of the time contemplated, it shall give six months' previous notice of such intention to said railroad company; provided also, that the bank shall be under no obligations to advance any money for the use of said company, nor to allow any interest on any sums deposited by virtue of said resolutions of seventeenth March; and provided further, that any expense, of whatever nature, the bank may have to incur to pay the interest-coupons outside of New Orleans shall be reimbursed by the said railroad company.

A true copy.

Attest:

(Signed) C. F. RONDEAU, *Cashier.*

489 *Subpœna in chancery.—Issued April 5th*, 1869.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Charles Morgan, a citizen of the State of New York, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of May, 1869, then and there to answer a bill in chancery filed against him, wherein the New Orleans, Opelousas and Great Western Railroad Company are complainants, and said Charles Morgan is defendant.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how have you executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this fifth day of April, in the year of our Lord one thousand eight hundred and sixty-nine, and the 93d year of American Independence.

[SEAL.] (Signed) D. URBAN, *Clerk.*
By F. B. VINOT, *D'y Clerk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of May, 1869; otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk.*
By F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received April 6th, 1869, by the U. S. marshal, and on the seventeenth day of April, 1869, served a copy of within subpœna on Charles Morgan, defendant named herein, personally at office, corner of Magazine and Natchez streets, in this city.

New Orleans, April 7th, 1869.

(Signed) S. W. REED,
D'y U. S. Marshal.

Entry at rules.—Extract from the chancery order docket, April rules, 1869.

Circuit court of the United States, district of Louisiana, at rules, April 5th, 1869, being the first day of the month.

On motion of M. M. Cohen, solicitor of the plaintiffs, and upon a submission of this bill, the court orders that notice of the motion for an injunction be given to said Morgan or his attorney; the motion to be heard on the sixteenth day of April, 1869, at 11 a. m.

(Signed) E. H. DURELL, *Judge.*

490 *Motion.—Extracts from the minutes of Friday, April 16th,* 1869.

THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company
vs.
CHARLES MORGAN. } No. 5817.

And now into court comes Charles Morgan, by Miles Taylor, and moves the court for leave to file in support of his opposition to granting the motion in this cause, made for an injunction to issue as prayed in the bill of complaint against him filed therein, the two papers now presented, as follows:

1st. The affidavit of Charles A. Whitney, with the accompanying statement or certificate made by the clerk of the court, in his official capacity, on the 23d of February, 1869, in the case of Charles Morgan vs. the New Orleans, Opelousas and Great Western Railroad Company, No. 5788 of the docket of this court; and

2d. The return made by the marshal of the United States for the district of Louisiana, of the service made in the New Orleans, Opelousas and Great Western Railroad Company, in the said case of Charles Morgan vs. the New Orleans, Opelousas and Great Western Railroad Company, No. 5788 of the docket of this court, on the day of , 1869.

Affidavit of Charles A. Whitney, referred to in the foregoing motion.—Filed April 16th, 1869.

U. S. circuit court, district of Louisiana.

THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company
vs.
CHARLES MORGAN. } No. 5817.

Charles A. Whitney, of the city of New Orleans, to me well known, being duly sworn, deposes and says:

That he is a member of the firm of Charles A. Whitney & Company, agents of Charles Morgan, plaintiff in the suit of Charles Morgan vs. the New Orleans, Opelousas and Great Western Railroad Company, No. 5788 of the docket of the circuit court of the United States for the district of Louisiana. That acting in his capacity of agent of the said Charles Morgan, he placed in the hands and possession of the clerk of the said circuit court on the twenty-third day of February, (the day when the petition in the said case was filed in the said circuit court,) the bonds and the interest coupons issued by the said New Orleans, Opelousas and Great Western Railroad Company, which are declared in the petition filed in the said cause, No. 5788, on that day to be annexed for reference, and made part of the said petition and to be set forth, enumerated, and described in the book filed with the said petition and marked D; and that on the same day, to wit, the twenty-third day of February, 1869, the clerk of the said court gave a statement in writing, signed by him in his official capacity, that the said bonds and coupons of interest and various other papers, had been filed or deposited on that day with the clerk of the said court, as annexed to and made a part of the said petition aforesaid, by Miles Taylor, attorney for the said Charles Morgan, as will be more fully seen
491 by reference to the said statement, which is hereto annexed as part of this affidavit.

(Signed) CHAS. A. WHITNEY.

Sworn to and subscribed before me April 16th, 1869.

(Signed) F. B. VINOT,
D'y Clerk.

Statement of certificate of the clerk referred to in the foregoing motion and affidavit to be found transcribed at page 32.

The return made by the marshal of service on the New Orleans, Opelousas and Great Western Railroad Company, in the case of Charles Morgan versus the New Orleans, Opelousas and Great Western Railroad Company, filed in this case on the 16th April, 1869, and referred to in the foregoing motion.

United States circuit court.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

To the New Orleans, Opelousas and Great Western Railroad Company:

By virtue of a writ of seizure and sale issued and to me directed, by the honorable circuit court of the United States for the fifth circuit and district of Louisiana, in the above-entitled suit, I hereby notify you to pay into my hands, within three days from the service of this notice, three hundred and sixteen thousand eight hundred and forty dollars, due to the plaintiff, and the costs; and that in default of such payment I shall seize and sell the property described in the accompanying petition and order served herewith, to satisfy the mortgage debt, agreeably to the said order and according to law.

(Signed) JOHN FAHY,
D'y Marshal.

U. S. MARSHAL'S OFFICE, *New Orleans, March* 31, 1869.

Marshal's return thereon.

Notice of demand issued March 31, 1869, and on the same day served a copy of the within notice and copy of the petition and order in the said case accompanying same, on the New Orleans, Opelousas and Great Western Railroad Company, by delivering them to A. B. Seger, president of said company, at their domicil, No. 69 Canal street, in the city of New Orleans.

New Orleans, March 31, 1869.

(Signed) JOHN FAHY,
D'y Marshal.

Hearing and continuance of rule.—Extract from minutes of Friday, April 16, 1869.

THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company *vs.* CHARLES MORGAN. } No. 5817.

The rule taken by complainant on the 5th instant came up—
492 M. M. Cohen, and Campbell, Spofford & Campbell, for complainant; Miles Taylor for defendant—when, after hearing argument, the same is continued till to-morrow at 11 a. m.

Hearing and continuance of rule.—Extract from the minutes of Saturday April 17, 1869.

THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company *vs.* CHARLES MORGAN. } No. 5817.

The rule in this case was resumed, and, after hearing further evidence, continued till Wednesday, 21st instant, at 11 a. m.

Motion and order fixing rule.—Extract from the minutes of Friday, April 23, 1869.

THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company *vs.* CHARLES MORGAN. } No. 5817.

On motion of Miles Taylor, solicitor for the defendant, ordered that the rule taken by complainant on the 5th instant be set for argument on Thursday, 29th instant, at 11 a. m., and that said complainant be notified hereof.

Marshal's return.

Received April 24, 1869, by the United States marshal, and on same day of April, 1869, served copy of within motion, etc., on M. M. Cohen, attorney named, personally, at United States court-room in this city; and on same day of April, 1869, served copy of same on Campbell,

Spofford & Campbell, attorneys named, in hands of J. A. Campbell, member of firm, at United States court-room in this city.

New Orleans, April 27, 1869.

(Signed) J. W. SAWYER,
Dy. U. S. Marshal.

Hearing and submission of rule.—Extract from the minutes of Tuesday, April 27, 1869.

THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company *vs.* CHARLES MORGAN. } No. 5817.

The rule pending in this case was taken up, Campbell, Spofford & Campbell, and M. M. Cohen for plaintiffs in rule; Miles Taylor for defendant in rule; and after hearing argument, the court took time to advise, and instructed the counsel to furnish printed briefs within the next ten days.

493 *Entry at rules.—Extract from the chancery order docket.*

May rules, 1869, Monday, 3d.

THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company *vs.* CHARLES MORGAN. } No. 5817.

The defendant, by his solicitor, Miles Taylor, esq., this day 'ade his appearance to complainant's bill.

Judgment.—Extract from judgment docket.

United States circuit court, fifth circuit and district of Louisiana.
April term, 1869.

NEW ORLEANS, *Monday, May* 24, 1869.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, district judge.

THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company *vs.* CHARLES MORGAN. } No. 5817.

For reasons orally assigned, it is ordered and decreed that the prayer for an injunction be denied, with costs.

Judgment rendered May 24, 1869. Judgment signed May 28, 1869.
E. H. DURELL, *Judge.*

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE:

I, Dominick Urban, clerk of the circuit court of the United States

for fifth circuit and district of Louisiana, do hereby certify that the foregoing 124 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Charles Morgan vs. The New Orleans, Opelousas and Great Western Railroad Company, No. 5788 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this thirtieth day of November, A. D. 1869.

[SEAL.] (Signed) D. URBAN, *Clerk.*

[Five-cent. internal revenue stamp affixed and canceled.]

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Dominick Urban, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said
494 certificate, and is now, the clerk of said court; that said certificate is in due form of law; and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 30th day of November, A. D. 1869.

(Signed) E. H. DURELL,
Judge.

[Five-cent internal revenue stamp affixed and canceled.]

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States, in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the circuit court, before you, or one of you, between the New Orleans, Opelousas and Great Western Railroad Company and Charles Morgan, a manifest error hath happened, to the great damage of the said New Orleans, Opelousas and Great Western Railroad Company, as by their complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 24th day of May, in the year of Lord one thousand eight hundred and sixty-nine.

(Signed) D. URBAN,
Clerk of the United States Circuit Court for District of Louisiana.

(Indorsed:) United States circuit court. No. 5788. Charles Morgan vs. The New Orleans, Opelousas and Great Western Railroad Company. Writ of error. Filed May 24, 1869. F. B. Vinot, d'y clerk.

THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Charles Morgan, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the New Orleans, Opelousas and Great Western Railroad Company are plaintiffs in error and you are defendant, to show cause, if any there be, why the judgment rendered
495 against the said plaintiffs, as in said writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this eighth day of July, in the year of our Lord one thousand eight hundred and sixty-nine.

(Signed) E. H. DURELL,
Judge.

(Indorsed:) United States circuit court. No. 5788. The New Orleans, Opelousas and Great Western Railroad Company, plaintiffs in error, vs. Charles Morgan. Citation.

Marshal's return.

Served on the ninth day of July, A. D. 1869, on Miles Taylor, attorney for Charles Morgan, in the hall of custom-house.

S. W. REED,
D'y U. S. Marshal.

(Indorsement on cover:) No. 321. The New Orleans, Opelousas and Great Western Railroad Company, plaintiffs in error, vs. Charles Morgan. Louisiana C. C. U. S. Filed December 6th, 1869.

496 *Order appointing expert.—Extract from the minutes, Monday, July 3, 1871.*

The court this day directed, for the reasons orally assigned in open court, that the following order be inserted in the minutes in the following entitled and numbered causes:

It is ordered by the court that J. D. Taylor be appointed an expert to prepare and have printed the records in the following entitled and numbered causes, viz:

No. 4. N. O., M. and C. R. R. Co. vs. City of New Orleans et als.
No. 21. Same vs. Pontchartrain Railroad Company.
No. 27. Same vs. City of New Orleans.
No. 19. Same vs. Same.
No. 345. State of Louisiana vs. City of New Orleans.
No. 116. Pontchartrain R. R Co. vs. Same.

Motion to tax fee.—Filed November 6, 1871.

State of Louisiana, eighth district court for the parish of Orleans.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 19.

On motion of C. S. Rice, of counsel for J. D. Taylor, appointed expert herein by the court, and on filing printed copy of record in this case—

It is ordered by the court that a fee of four hundred and forty-one $\frac{30}{100}$ dollars be allowed said expert for transcribing, compiling, and printing the record in this case, and that the same be taxed as costs.

Reasons for judgment, delivered and filed December 6th, 1871.

By an act of the general assembly of Louisiana approved by the governor August 19, 1868 (acts 1868, p. 28), the New Orleans, Mobile and Chattanooga Railroad Company, a corporation in the State of Alabama, was recognized and authorized to exercise and enjoy its corporate powers and franchises within this State. Under the provisions of this statute, and of several subsequent acts, the company was empowered to build and maintain a railroad from a point on the borders of Alabama and Louisiana upon a line from Mobile to New Orleans, through the latter city, crossing the Mississippi River by ferry, and westward to the State of Texas. The name of the corporation was subsequently changed, and it is now known as the New Orleans, Mobile and Texas Railroad Company. (Acts 1871, p. 211.)

The first act cited authorized the company to run the road along and upon the levee in front of the city of New Orleans. Another act (No. 67 of 1869) empowered the company to enclose and use a portion of the batture, extending about three hundred and fifty-five feet from Calliope street down the river. By another act (No. 26 of 1869) the com-
497 pany was granted the right to build a passenger depot on the levee, in that portion bounded by Canal, Delta, and Poydras streets, and a line parallel to and one hundred and fifty feet easterly from Delta street; "and for the construction of a freight depot, and for other purposes of its legitimate business, to inclose and occupy the blocks of ground, parts of streets, and portions of levee in said city, bounded by Girod, Water, and Calliope streets, and a line parallel to and two hundred and ninety feet easterly from Water street." This grant was made with the proviso that the company shall first acquire any private property within the boundary described. Still another statute (No. 31 of 1870) confirmed all grants before made, but changed the line of the railroad leading out of the city toward Mobile. The line first designated was down the levee to the junction of Spain street; thence by a curved line to Enghien street; thence along and upon Enghien street and Lafayette avenue to Claiborne street. (Section 1, act No. 28, 1868.)

The new course was from the levee by a curved line into Elysian Fields street, and along two central banquettes or walks in said street, being two strips of ground twelve feet in width, one upon each side of and adjoining the land owned by the Pontchartrain Railroad Company in the central portion of the street. (Section 1, act No. 31, 1870.)

Section six of this act provides "that all that portion of the levee or

streets and grounds in the city of New Orleans lying within the following named limits, viz: The southerly (or upper) line of Canal street, from the Mississippi River to the easterly line of Water street; the easterly line of Water street, from the southerly line of Canal street to the southerly (or upper) line of Girod street; the southerly line of Girod street, from easterly line of Water street to the easterly line of the lands designated for the location of the freight depot of the company; the easterly line of said depot lands, from the southerly line of Girod street to the northerly (or lower) line of the batture rights owned by said company; the northerly (or lower) line of said batture rights from said depot lands to the Mississippi River; and the Mississippi River, from the northerly (or lower) line of said batture rights to the southerly line of Canal street is hereby expressly dedicated to public use, and shall forever remain open for such use, and no part of said lands, or of the accretions and wharf in front of the same, shall ever be inclosed or built upon or granted for ferry landings, or exclusively appropriated or used by any individual or individuals, corporation or corporations, or by the municipal authorities of the city of New Orleans."

This company, however, was granted the right to construct, maintain, and use across or upon said lands, or any part thereof, such railroad tracks, turnouts, and switches, from its main track on Water street, as might be necessary for purposes of egress from or ingress to its depots. Any act of the city authorities calculated to contravene this grant was stricken with nullity.

The several acts above cited contain many other grants of aid, privileges, and franchises to the said company, but the issues in this case, and in several others to be now decided, only involve the validity of the acts in so far as they authorize the occupancy of the streets, levees, and lands hereinbefore detailed, and in the manner set forth.

In the course of this litigation, the City of New Orleans urges the unconstitutionality and invalidity of the legislative warrant for the construction of the railway along and upon the levee in front of the city, and especially attacks the grant to the company of the right to
498 inclose and use the batture at the foot of Calliope street. In this contest the city is supported by Mr. Charles Morgan, owner of the New Orleans, Opelousas and Great Western Railroad. Mr. Morgan, joined with the city, claims as against the plaintiff the right to the square of ground hereinbefore described, bounded by Girod, Water, and Notre Dame streets, and known in this litigation as square "37A."

The Pontchartrain Railroad Company, a corporation in this city, joined with the city, contest with the company, plaintiff, the right to lay its tracks upon the strips of land in Elysian Fields street, hereinbefore described; and, finally, certain front proprietors seek to prevent the construction of the road upon the levee in front of property owned by them.

This suit involves most of these questions. The New Orleans, Mobile and Chattanooga Railroad Company sought and obtained a writ of injunction restraining the City of New Orleans and Mr. Morgan and his agents from interfering with the company, plaintiff, in the construction of its road in conformity with the maps filed with the petition, marking the route as defined in the several acts hereinbefore cited. The Pontchartrain Railroad Company was also made a defendant, and restrained by injunction from interfering with plaintiff in the construction of the road along Elysian Fields street.

The case was presented to the court with great care and consummate ability by the several learned attorneys representing the different par-

ties in interest. There is much documentary proof and oral evidence, together with numerous maps and plans; but the questions of fact are so intimately connected with the legal issues that they need not be considered separately.

There are three distinct issues of law presented for consideration:

First. It is maintained by the City of New Orleans, as against the railroad company, plaintiff, that levee and batture in front of that portion of the city lying between Canal street and Calliope street is vested in the municipal corporation; that this ownership is full and complete, and that the grants by the legislature to the company of the right to enter upon and use the same are acts divesting the vested rights of the city, and therefore unconstitutional and void. It is also distinctly maintained by the city and the other defendants that municipal authorities have the right to determine and regulate the use of the streets and other public places upon which the company claims to be entitled to enter.

Second. It is maintained by the defendants that the levee or public quay in front of the old city of New Orleans, between Canal and Elysian Fields streets, was originally dedicated by the sovereign of France to public use; that the municipal authorities are the administrators of this public use, and that the acts of the assembly assuming to divert the locus publicus in question to a use not originally intended are void, because they divest the vested rights of the community.

Third. The Pontchartrain Railroad Company, one of the defendants (seconded and sustained by the City of New Orleans), claims the right, by virtue of its charter and an ordinance of the city, to occupy and use the two strips of land on Elysian Fields street hereinbefore described, upon which the company, plaintiff, claims the right to lay its tracks. This issue involves mixed questions of fact and law, of ownership, of realty, and of the question of the paramount authority to administer the public place in dispute.

1. There have been few instances of litigation more notable than that involving the right of ownership in and to the batture in
499 front of the city of New Orleans. It has occupied the attention of the courts of this State, and of the Territory, for nearly seventy years. The Supreme Court of the United States has passed upon certain of the issues, and in the elucidation of the questions involved several of the master minds of the country have devoted their most earnest attention. President Jefferson was engaged in a violent personal controversy with Edward Livingston, who was esteemed among the foremost publicists of the age. The importance of, and interest in, this litigation resulted from the peculiar character of the property in dispute. At this particular point on the Mississippi the bend of the river and the course of the currents cause constant sedimentary deposits, so that during the period of a hundred years the accretions have amounted to many squares of very valuable land. To whom should this product of the river belong?

There were three theories: The city of New Orleans claimed it as an accretion to the public streets and levees or quays fronting upon the stream.

The front proprietors claim it as an accretion to their property, maintaining that their riparian rights were not affected by reason of their land being within the municipality, or by the fact that the banks of the stream were subject to a servitude in favor of the public, and was separated from their property by a public street.

And the United States Government claimed the batture in front of the city, as the successor of the sovereign of France.

The following extract from admissions of counsel (Rec., page 50) establishes the history of the property above Canal street:

"For the purposes of this trial, it is admitted that the King of France, prior to the year 1763, granted to the order of Jesuits, for a plantation, certain property lying on the Mississippi River above Canal street, having thirty-two arpents front on the Mississippi River, and running back to a depth of about fifty arpents; and that, for the same purpose, he granted to various other persons property lying above the aforesaid thirty-two arpents.

"That in 1763 the Jesuits' plantation was confiscated by the French Government, divided and sold; the first subdivision above Canal street, sold as aforesaid, contained, say seven arpents face au fleuve, and five other equal subdivisions were sold in like manner.

"That Gravier acquired the first subdivision about the year 1788; the second, being immediately above Gravier, was acquired by Delord Sarpy; the boundary line between said claim being now designated by Delord street. That Gravier divided his property in 1788 into squares and lots, and annexed them to the city as "Suburb Ste. Marie." Sarpy converted his property from rural into urban in 1806.

"That the locus in quo above Canal street is embraced within the Gravier and Sarpy claims; that when the aforesaid change from rural to urban was made the street now called Tchoupitoulas was the nearest street to the river; that at that time there was a batture in front of Tchoupitoulas street; that the same, without any form or ceremony, was, as early as 1788, dedicated to public use, and since that time has been used by the public as a locus publicus."

While it is intensely interesting to follow the history of this most celebrated litigation; to read and admire the displays of classic learning and eloquence of both bench and bar, it is, as to this suit, utterly unprofitable. The questions of ownership involved have been definitely and finally settled by the courts of last resort. The accretions to the batture in front of the city of New Orleans belong to the front riparian proprietors. (18 La., 123.)

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But this case has to do with an incident, the most important incident, of the batture litigation. In 1807 the territorial court affirmed the title of the front proprietors to the batture. This victory proved, however, comparatively barren to Livingston and his associates, for, though they owned the batture, they could not use it, because the city of New Orleans refused to advance the levee or street, and the owners had no authority to do so. In 1819 the supreme court rendered a decision in the case of Morgan vs. Livingston et al., 6 M. 19, in which the titles of Livingston and others, transferees of Gravier, were questioned, if not entirely overthrown. These facts resulted in a compromise with the city of New Orleans, which was entered into September 20, 1820. By this act Edward Livingston and his seven cofront owners of the suburb St. Mary gave to the city the batture. They also gave the right to extend the streets up the levee, bound themselves to build the wharves in front of their property, and presented to the city enough cash to construct a market upon the property. The act first recites that the donors, "wishing to favor the public in the use of the river side which lies in front of said batture, and to facilitate the communication between the streets which will terminate at that place, have, by these presents, made a donation inter vivos and irrevocable, and in the

best forms in which a donation may be valid, to the mayor, aldermen, and inhabitants of New Orleans." (Rec. p. 59.)

This act of compromise, or donation as it was called at the time, was examined and passed upon by the supreme court in the case of Delabigarre vs. Second Municipality, 3 An. 230. After reviewing the facts and circumstances attending the act of donation, the court held that it was no donation, though having the form, but a compromise, subject only to the rules applicable to a commutative contract. It was a stipulation, though carefully disguised, by which the public obtained the existing batture, with the right to future accretions and other advantages named, in consideration of letting Mr. Livingston and his associates alone in what they possessed.

The compromise subsequently received the sanction of the legislature. In 1836, in an act amending the charter of the city (Acts 1836, page 28, section 11), it was provided, "that no disposition shall ever be made of the batture in front of the faubourg St. Mary in violation of the transaction or compromise in relation to said batture entered into," etc, "and that the municipality of the upper section of the city of New Orleans shall not in any manner impede or obstruct the inhabitants of any portion of the city of New Orleans in the free use and enjoyment of any portion of their rights on said batture."

As the years rolled on and left their history so the currents of the changing river swept by and deposited their sediment. The city grew in commercial importance, but its highway kept receding from the lines of business. The width of the landing became inconvenient. But the place was a locus publicus. The city could not sell the property nor build upon it. The State alone could change its destination. Accordingly, in 1850, the legislature passed a law (Acts of 1850, No. 257), by which the clause in the act of 1836 was repealed. The council of municipality No. 2 was then authorized to lay off two streets between New Levee street and the river. It was required that the batture in front of the new streets should be left open, and so kept, for the accommodation of the public and the convenience of commerce.

501 It was further provided, that in the event of an agreement between the original parties to the compromise, the municipality might sell all the batture not reserved as above for the accommodation of the public and the convenience of commerce.

This act resulted in what is called the compromise of 1851. (Record, p. 67.)

The survivors and representatives of the parties to the compromise of 1820 made a notarial act with a committee of the council, by which, after reciting the inconveniences to commerce, etc., they agreed to alter the destination and authorize the sale of certain specified portions of the batture in question. The proceeds were to be divided in three parts, one-third to the representatives of the original donors; one-third to a sinking fund, in conformity to the act of 1850, and the remaining third to the treasury of the municipality.

The following clause in this act occurs:

"And that all the portion of the batture between Delta street and the river Mississippi above Lafayette street to the line of Montgomery's property, and all that portion of the batture between Front street and the river Mississippi, from Lafayette street down to Canal street, shall be and is hereby vested in perpetuity and full ownership in said municipality No. 2, in favor of whom the appearers to this act hereby cede and relinquish forever all their claims in and to the said batture, as well as every enlargement thereof, or accretion thereto, by new formations."

The city now makes this stipulation one of the grounds for claiming unlimited powers of control over the property in contest. But this so-called compromise is only referred to because the counsel for the city lays so much stress upon it. It seems to be in the opinion of the supreme court a dead letter, though made upon the warrant of an act of the legislature. In case of Parish et al. vs. Municipality No. 2 et al., 8 An., 145, the court held that the stipulation in the compromise of 1820, forbidding the city to alienate or build upon the batture thereby dedicated to the public, was not binding upon the State, by whose sovereign power the destination of this locus publicus might be changed. The court said that it would give full effect to the act of 1850, in so far as it changed the destination of a portion of the batture, and authorized the sale of it, but the act was held to be void in so far as it recognized any legal rights in favor of the parties to the compromise of 1820. The effect of this decision was to hold that the so-called compromise of 1850 was of no effect, except in so far as it witnessed a handsome donation from the municipality to the representatives of the parties to the compromise of 1820.

Without the overshadowing authorization of an act of the legislature, the city of New Orleans has had no power, from 1820 until now, to dispose of a square foot of the batture in front of the suburb St. Mary. In the case of Delabigarre reference is made to an ordinance passed by the municipality, ordering a portion of the batture to be sold. The court characterized this act as a glaring usurpation of power, from which no legal effects could result, and added that it was proper to state that the attempt was not persevered in.

It results from these considerations that the batture in front of the suburb St. Mary, so called, is public property, and not the private property of the municipal corporation of the city of New Orleans. (Civil Code, 458.)

This leads to an examination of the power of the State, by legislative act, to regulate the use of this locus publicus.

The counsel for the City of New Orleans and the other defend-
502 ants insist that the municipal government has the sole power of controlling the uses of the streets, quays, and other public places within the municipal limits; that the legislative acts divesting the city of such control are laws divesting vested rights, and therefore void.

In the brief for the City of New Orleans occurs the following expression: "We desire to keep in mind the distinction which clearly exists between the public and the City of New Orleans, the one, if we may so term it, being a juridical being, represented by the city, and the other a municipal organization, incorporated by law."

There is, indeed, a distinction between the public and the municipal corporation, but it is much broader and very different than is indicated in the language quoted. The public is constituted of the free people—the citizens of the Commonwealth, and those strangers to whom the Commonwealth grants its freedom. The public is not represented by any municipal government, but by the authorities constituted in the organization of the State. If this distinction is kept in mind, the legal question now being considered will be solved without difficulty.

There is no question but that the City of New Orleans has the power to administer the use of the river banks and the batture. (18 L. 278.) The city may erect wharves (6 R., 349); may remove nuisances or obstructions from the streets or other loci publici (1 M. 187; 4 M. 10; 3 L. 563). So the city has full power to regulate and improve the streets,

and may grant the right of way to railways. (14 A., 842). These powers correspond to those vested in every incorporated city in the land.

But the power of the municipal corporation to regulate the use of the streets and other public places is subordinated to the paramount authority of the State. "The fee of the streets of a city, where it has been acquired by the municipality under the right of eminent domain, becomes public trust for general purposes, and is under the unqualified control of the legislature, and any legislative appropriation of it to public use is not to be regarded as the appropriation of private property, so as to require compensation to the city or municipality to render it constitutional." (Redfield on Railways, vol. 1, p. 259, citing 27 N. G., 188 and 47; Penn., 325.)

In this case it was held that the city of Philadelphia exercised a portion of the public right of eminent domain in respect to the streets within its limits, subject only to the higher control of the State and the use of the people. (Cooley Constitutional Limitations, 208.)

The correct doctrine would seem to be that under the power granted in the charters of the cities the local authorities may make all regulations necessary for the control of the public ways and places within the corporate limits, subject always to the limitation that the municipal government cannot change the destination nor divert to private use the loci publici. But when the legislature of the State makes a grant or enacts a regulation within the limits of a city such grant or regulation is paramount to any grant or regulation made or to be made by the municipal corporation. In presence of the greater power the lesser is abated.

But it is urged in this case that the several acts of the legislature granting to the New Orleans, Mobile and Chattanooga Railroad Company the right to lay their tracks along the line and upon the batture property have the effect of diverting the public property in question to a private purpose, or at least to a purpose different from that to which it was originally dedicated. They insist that such diversion cannot be effected under the pretense of regulating the use of the locus
503 publicus, but only by the exercise of the powers of eminent domain, and after compensation granted.

The doctrine cited from the case of New Orleans vs. The United States (10 Peters) is, of course, beyond controversy. The inhabitants of a town cannot be deprived by the sovereign of the streets essential to the enjoyment of their property, unless it be expropriated after compensation made. But it is equally well settled in this country that the grant of the right to run a railroad through a public street or highway is an application of such property to the use of the public. (Redfield on Railways, section 19; 27 N. Y., 188.)

The decisions are conflicting as to the right of abutting proprietors to demand compensation. It would seem to depend upon the special circumstances of the case. At all events, that question does not arise in this case, for the city is not the attorney in fact of the property-holders along the levee.

Another consideration: It does not lie in the mouth of the defendants to complain of the locality of this grant, for the evidence shows that the city council has assumed the right to permit the construction of the Pontchartrain Railway along the same public place.

Evidence was adduced to show that the construction of the plaintiff's road along the batture in front of the city is calculated to prevent the landing of steamboats; to drive them out of this trade, and, ultimately, to destroy the commerce of New Orleans.

A consideration of the questions decided renders it doubtful whether the court could interfere in this case, even though the proof established the theory of the defendants. But the exhibit of maps and the evidence taken does justify the fears that the construction of the railroad through the front of New Orleans to Texas will entirely destroy the commercial importance of the city. Men and corporations alike are apt to be wedded to the past. It is not unnatural, therefore, or unexpected, that the steamboatmen should think that this new avenue of trade is destined to destroy the old. When steamboats first began to ply the river, flatboatmen complained bitterly that their constitutional rights had been impaired.

The conclusion follows that the several acts of the general assembly upon which the plaintiff relies do not impair or violate the legal or constitutional rights of the City of New Orleans, or of the other defendants, in and to the batture in front of the old faubourg St. Mary.

2. The decision of the first question of law in this case practically determines the second, viz: The validity of the grant to the plaintiff of the right to lay its tracks along the levee in front of the old city of New Orleans, from Canal to Elysian Fields street. The decision of the Supreme Court of the United States (10 Peters), and the admissions in the record (p. 51), determine beyond question that this batture is a locus publicus in every sense. The site was granted by the King of France to the "Western Company" in 1717. When the city was laid out, in 1724, the quay in question was formally dedicated to public use by the maps and surveys. It has remained a locus publicus from that time to this, though by authority of the legislature the streets have been advanced nearer the river.

This batture being a public place, its use and regulation is under the paramount control of the State.

3. The third and last issue in this case is between the Pontchartrain Railroad Company and the plaintiff, in relation to the grant of
504 the right to construct the road upon and along two central banquettes or walks in Elysian Fields street. (Sec. 1, act No. 31, 1870.) The following is the language of the act:

"That the said company be and is hereby authorized and empowered to locate, construct, maintain, and use for the passage of its engines and cars the tracks of its railroads (with the requisite curves to and from the same) from the levee to the line designated in the said ordinances of the city of New Orleans for the extension of Claiborne street, along and upon the portions of Elysian Fields street and intervening streets, originally designated for the two central banquettes or walks in Elysian Fields street, the said banquettes being two strips of ground twelve feet in width, one upon each side of and adjoining the land said to be owned by the Pontchartrain Railroad Company in the central portion of said street."

The act further presumes to strike with nullity any ordinance of the city, or any act of any person or judge calculated to prevent the occupancy of these strips of land.

In the supplemental petition of the plaintiff (Rec., p. 17) it is alleged that the Pontchartrain Company have no title to the central portion of Elysian Fields street occupied by its road, or to the banquettes upon either side.

In the answer of the Pontchartrain Company (Rec., p. 121), that corporation sets up its charter, granted January 20, 1830, authorizing the construction of the road to Lake Pontchartrain, and its extension to any point in the city of New Orleans, after obtaining the consent of the

municipality. The said defendant also sets up an ordinance, passed by the city of New Orleans, March 15, 1830, by which the company was granted the right to construct its road upon the two strips of land described. This defendant then insists that the "grants of the right of way, and use of ground as aforesaid, by the State and city * * * are contracts within the meaning of the constitution of the United States, and that all their rights, franchises, and privileges in the premises are inviolable by State authority."

The evidence in the record shows that in the centre of what is now Elysian Fields street there was formerly a canal, which was, in 1805, the private property of Bernard Marigny, who owned a plantation through which the canal, or rather proposed canal, was to run. In April, 1805, Mr. Marigny was authorized by the municipality to constitute his plantation into a faubourg, which was done. In 1805 a notarial act was made between the city and Marigny, in which he donated certain lands to the city for streets and squares, and especially fifty feet upon each side of the canal for streets and banquettes, reserving fifty feet for the canal. His canal was to extend from the river back to Florida avenue, thence by an elbow to Bayou St. John. Subsequently he, Marigny, released to the city the right to construct a levee and public road in front of the reservation of fifty feet.

In 1830, February 23, the Pontchartrain Company bought from Marigny this property for a valuable consideration. It is now the private property of that corporation. Any attempt of the legislature to authorize the plaintiff to enter upon this property, unless after expropriation, would be clearly invalid.

But the defendant places most stress upon the invalidity of the act authorizing the plaintiff to occupy the strips of land or banquettes hereinbefore described.

505 An examination of the authorities and a consideration of the principles hereinbefore ascertained leads to the conclusion that it was within the legislative power to authorize the railroad company, plaintiff, to occupy the public places in question without violating the constitutional rights of the other company. It is a settled doctrine that the State cannot completely divest itself of any of its sovereign powers. Among these powers is that of police, which includes the authority to regulate the uses of the public places. If the State cannot barter away its paramount control over such uses certainly a municipal corporation, exercising those powers in a local and subordinate manner, cannot. (1 Redfield, 259; Cooley on Constitutional Limitations, 283, note 1, and authorities.)

The ordinance of March 15, 1830, was annulled by the provisions of the act No. 31 of 1870. This exercise of legislative authority is not subject to the imputation of being an act impairing the obligations of a contract, or divesting vested rights. If any contract resulted between the city of New Orleans and the Pontchartrain Railroad Company, by the ordinance of 1830, there was an implied condition that the grant was at all times subject to the superior control of the legislature.

The city of New Orleans recognized this authority of the State. After the passage of the law aforesaid, February 21, 1870, the city council adopted an ordinance, July 26, 1870, withdrawing the permission to the Pontchartrain Company to occupy the banquettes in dispute.

But the maps and plans in evidence, and the testimony of several witnesses, establish that the plaintiff, in constructing its road by a curved line from the levee into Elysian Fields street, has laid its tracks

across a portion of the private property of the Pontchartrain Railroad Company. This act should render the plaintiff liable for damages. The track must be removed, unless the property is expropriated and paid for.

The plaintiff prays for damages against the City of New Orleans and the other defendants. No evidence has been offered to substantiate the claim.

It is not necessary to sum up in conclusion. Judgment will be entered for plaintiff, the New Orleans, Mobile and Chattanooga Railroad Company, perpetuating the injunctions issued upon the original and supplemental petitions.

The plaintiff's claim for damages will be dismissed, as in case of nonsuit.

A reservation will be made to the Pontchartrain Railroad Company to proceed against the plaintiff by action for damages, or otherwise, for the invasion by plaintiff of the private property of the said defendant, at the junction of the levee and Elysian Fields street.

The reconventional demand contained in the answer of the City of New Orleans will be dismissed.

The decree will be drawn by the counsel for the plaintiff. If not agreed to by the counsel for the defendants, it will be settled by rule within five days from the filing of this opinion.

506 *Draft of decree presented by attorney for plaintiff.—Filed December 5, 1871.*

NEW ORLEANS, MOBILE AND TEXAS R. R. CO.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 19.

Eighth district court, parish of Orleans.

This case having submitted by the plaintiff, defendants, intervenor, upon the pleadings and proofs, and the court having heard argumen*orft* *m* the counsel for all the parties, and taken advisement upon matters of law and fact, doth order, adjudge, and decree:

That the plaintiffs, under their act of incorporation and under acts relative to the company subsequently thereto, were authorized and empowered by the general assembly of this State to locate, construct, maintain, and use a railroad with one or more tracks, and with suitable turnouts, from any point between Calliope and Girod streets and between Delta street and the levee in the city of New Orleans, along and upon the levee in the said city, or along and upon a street or streets near the levee, as may be most proper and expedient; and were further authorized and empowered to locate, construct, maintain, and use, for the passage of its engines and cars, the tracks of its railroad (with the requisite curves to and from the same) from the levee to the line designated in the said city for the extension of Claiborne street, along and upon the portion of Elysian Fields street and intervening streets, originally designed for the two central banquettes or walks in Elysian Fields street, the said banquettes being two strips of ground twelve feet in width, one upon each side of and adjoining the land said to be owned by the Pontchartrain Railroad Company in the central portion of said street.

The plaintiff has proved, by the production of maps and other testimony, that the said railroad was surveyed, located, laid down, and is

so complete in the portions set forth as being in the city as to be in use and operation, and that the defendants did so illegally interfere with and obstruct the progress of the work so as to make an injunction an appropriate and legal remedy.

The court perpetuates the injunctions heretofore granted, and quiets the title of the plaintiffs under the acts of the general assembly described in the plaintiffs' petition and supplemental petitions, in order that the said plaintiffs be established and maintained in all their property, privileges, and franchises to the said road and its appurtenances, freed and discharged from any right, power, or control of the defendants in the matters complained of.

But this decree must not be held or construed to impair any claim of the Pontchartrain Railroad Company for or account of any act of the plaintiffs in using or occupying or holding any part of the middle ground on the Elysian Fields street which had been reserved for the Marigny Canal, and which is claimed by the said company under conveyances derived from B. Marigny; and that the rights of the said Pontchartrain Railroad Company for compensation damages for any appropriation, use, or disturbance of their possession of the said middle ground shall not be impaired by this decree.

507 It is ordered that the intervention in this suit by the City of New Orleans be dismissed, with costs, and defendants pay the costs of the suit.

We object to the within draft of decree.

(Signed) LEA, FINNEY & MILLER,
For Pontchartrain R. R. Co.

DECEMBER 7, 1871.

Order of court.—Extract from the minutes, Friday, the 8th day of December, 1871.

Present, the honorable Henry C. Dibble, judge.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 19.

In this case, counsel for the plaintiff having drafted a decree in conformity to the order in the opinion of the court, and the same having been submitted to one or more of the counsel for the defendants, who decline to agree to the same,

It is ordered that the counsel for the defendants show cause on Tuesday, December the twelfth, at ten o'clock a. m., why the decree drafted by counsel for plaintiff and on file should not be entered as the final judgment of the court; and that counsel for the plaintiff have notice of this order.

Sheriff's return on order.—Filed December 12, 1871.

Received December 9, 1871, and on the same day, month, and year served a copy of the within rule on Lea, Finney & Miller, by service in person on J. N. Lea, of said firm.

Returned same day.

(Signed) JAS. McK. RICHARDS,
D'y Sheriff.

And on the eleventh day of December, 1871, I served copies of the within rule on J. A. Campbell, esq., F. A. Monroe, esq., of the firm of Leovy & Monroe, attorneys at law, and on George S. Lacey, esq., attorney, personally.

Returned same day.

(Signed) J. A. GANDOLFI,
Dy Sheriff.

I was credibly informed that Miles Taylor, esq., was absent from the city and could not learn who was representing him in his absence. I therefore make my return.

December 11, 1871.

(Signed) J. A. GANDOLFI,
Dy Sheriff.

508 *Rule continued.—Extract from the minutes, December* 12, 1871.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 19.

The rule in this case, upon counsel for defendants, to show cause why the decree drafted by counsel for plaintiff, under the order contained in the written opinion of the court filed December 2, 1871, was, on motion and by consent of counsel, ordered to be continued indefinitely.

Reasons for judgment.—Filed December 14, 1871.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 19.

In this case the opinion of the court was read on the second December, and it was ordered that the decree be drafted by the attorneys for the plaintiff, and if not agreed to by counsel for defendants, it should be settled within five days by rule. An order was consequently made for defendants' counsel to show cause on the twelfth December why the decree drafted by plaintiff's counsel should not be entered as the final decree in the case.

This rule, on the twelfth December, was continued indefinitely. There was no disposition on the part of counsel to try this rule.

It is therefore ordered that the rule made on the defendants, continued indefinitely on the twelfth December instant, be rescinded, and that the following decree be entered:

Judgment.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 19.

In this case, for the reasons contained in the written opinion *the of* court, this day filed—

It is ordered by the court that the rule made on defendants to show cause why the decree drafted by counsel for plaintiff should not *b en-e* tered as the final decree in this case, which said rule was continued in-

definitely on the twelfth day of December, 1871, be now rescinded and the following decree entered:

It is therefore ordered, adjudged, and decreed that there be judgment in favor of the plaintiff, the New Orleans, Mobile and Chattanooga Railroad Company, and against the City of New Orleans, George Pandely, Charles A. Whitney, A. C. Hutchison, and the Pontchartrain Railroad Company, defendants; that the writs of injunction issued herein upon the original and supplemental petitions obtained at the suit of said plaintiff be made perpetual, and that the City of New
509 Orleans, A. C. Hutchison, and C. A. Whitney be enjoined, prohibited, and restrained from in any manner interfering with or obstructing the said plaintiff in the construction or maintenance of its railroad upon and along the levee, streets, and batture described and designated in the acts of the general assembly granting such rights and privileges to said company, and by the maps filed with the secretary of state and with the mayor of New Orleans.

It is further ordered, adjudged, and decreed that the Pontchartrain Railroad Company be perpetually enjoined, prohibited, and restrained from obstructing, hindering, or in any way interfering with the plaintiff in laying and maintaining the tracks of the New Orleans, Mobile and Chattanooga Railroad Company upon the spaces of ground mentioned in the first section of the act of the general assembly approved February 21, 1870, being the central banquettes or walking avenues which line the space of fifty feet in the middle of Elysian Fields street, reserved by Mr. Bernard Marigny, and now owned by the Pontchartrain Railroad Company, defendant.

It is ordered that the said Pontchartrain Railroad Company be reserved the right to proceed against the plaintiff, by action for damages or otherwise, for the invasion by the plaintiff of the private property of the Pontchartrain Railroad Company at the junction of the levee and Elysian Fields street.

It is further ordered, adjudged, and decreed that the plaintiff's demand for damages made in the original petition be dismissed as in case of non-suit.

And it is still further ordered, adjudged, and decreed that upon the answer and demand in reconvention, filed by the City of New Orleans, and upon the issue made thereon, there be judgment against the plaintiff in reconvention, the City of New Orleans, and in favor of the defendant to said plea and demand, the New Orleans, Mobile and Chattanooga Railroad Company; that the several acts of the general assembly granting the New Orleans, Mobile and Chattanooga Railroad Company the right to construct, maintain, and use its track, turnouts, switches, depots, etc., etc., along and upon the levee, streets, or batture in front of the City of New Orleans be maintained as constitutional and valid, and that the City of New Orleans be adjudged to have no right or title of private property in and to the batture property lying in front of the faubourg St. Mary, and that the said property, and especially those spaces of ground described in the grants to the plaintiff, be decreed to be the property of the public, whose destination can only be changed by legislative authority, and which the City of New Orleans cannot alienate or encumber.

It is finally ordered that the defendants pay costs.

Judgment rendered December 14, 1871. Judgment signed December 19, 1871.

(Signed) HENRY C. DIBBLE, *Judge.*

510 *Rule for new trial.—Extract from the minutes, December* 14, 1871.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 19.

On motion of H. H. Walsh, assistant city attorney—

It is ordered that the plaintiff show cause why a new trial should not be granted herein.

It is further ordered by the court that the above rule be set aside and a new trial refused.

Motion and order of P. R. R. Co. for suspensive appeal.—Filed December 22, 1871.

Eighth district court, parish of Orleans.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 19.

On motion of Lea, Finney & Miller, attorneys for the Pontchartrain Railroad Company and George Pandely, defendants herein, and on suggesting to the court that the said defendants desire to take a suspensive appeal from the final judgment herein rendered on the fourteenth day of December, 1871, and signed on the nineteenth day of the same month,

It is ordered by the court that said defendants have and be allowed a suspensive appeal from said judgment, returnable to the supreme court on the third Monday of January, 1872, on giving bond in the sum of twenty-five hundred dollars, in favor of the clerk of this court, with good and solvent surety, and conditioned as the law requires.

Bond of P. R. R. Co. for appeal.—Filed December 23, 1871.

Know all men by these presents that we, the Pontchartrain Railroad Company and George Pandely, as principals, and Alexander Brother, as surety, are held and firmly bound unto Thomas Lynne, clerk of the eighth district court for the parish of Orleans, and his successors in office, in the sum of twenty-five hundred dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seal and dated in the city of New Orleans, on this twenty-second day of December, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas the above-bounden Pontchartrain Railroad Company and George Pandely have this day filed and made a motion for an appeal from a final judgment rendered against them in the suit of the
511 New Orleans, Mobile and Chattanooga Railroad Company vs. The City of New Orleans et al., No. 19, in the eighth district court for the parish of Orleans, on the fourteenth day of December, 1871, and signed on the nineteenth day of the same month, 1871:

Now, the condition of the above obligation is such that the above-bound Pontchartrain Railroad Company and George Pandely shall prosecute their appeal, and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the

appeal; otherwise that the said Alexander Brother shall be liable in their place.

(Signed) PONTCHARTRAIN RAILROAD COMPANY,
By GEO. PANDELY, [SEAL.]
President.

(Signed) GEO. PANDELY. [SEAL.]
(Signed) A. BROTHER. [SEAL.]

Signed, sealed, and delivered in presence of—
(Signed) GEO. W. WISE.

Petition and order for suspensive appeal.—Filed December 27, 1871.

Eighth district court for the parish of Orleans.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

To the honorable the judge of the eighth district court for the parish of Orleans:

The petition of the City of New Orleans, a municipal corporation chartered by law, respectfully represents:

That she is informed and believes that there is error in the judgment rendered in the above-entitled and numbered cause to her prejudice, and that she feels aggrieved by such judgment, and is desirous of taking a suspensive appeal therefrom.

That, by law, the City of New Orleans is dispensed, in all cases, from giving bond and security.

The premises considered, petitioner prays that she be allowed a suspensive appeal from the final judgment rendered herein, returnable before the honorable the supreme court of the State of Louisiana on the third Monday of January, A. D. 1872, without bond and security; and that the New Orleans, Mobile and Chattanooga Railroad Company, George Pandely, Charles A. Whitney, A. C. Hutchison, Charles Morgan, The Pontchartrain Railroad Company, and all parties whomsoever interested in the judgment rendered in this cause, be recited to appear and answer this appeal.

And, as in duty bound, petitioners will ever pray.

(Signed) GEO. S. LACEY.
City Attorney.

512 *Order.*

Let a suspensive appeal be allowed the City of New Orleans, returnable before the honorable the supreme court of the State of Louisiana on the third Monday of January, A. D. 1872, without bond, and let all parties be cited as prayed for, and according to law.

New Orleans, December 27, 1871.

(Signed) HENRY C. DIBBLE, *Judge.*

Agreement.—Filed January 25, 1872.

Eighth district court for the parish of Orleans.

N. O., M. AND CHAT. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

It is agreed that the plans and maps offered in evidence in the district court by any of the parties shall be carried up to the supreme court with the transcript of appeal, and be deemed a part of the transcript of appeal.

January 23, 1872.

(Signed) LEA, FINNEY & MILLER,
For Pontchartrain R. R. Co.
J. A. CAMPBELL,
Attorney for Plaintiff.

(Signed) GEO. S. LACEY, *City Attorney.*

Clerk's certificate:

I, Thomas Lynne, clerk of the eighth district court for the parish of Orleans, do hereby certify that the foregoing two hundred and fifty-nine pages do contain a true and correct transcript of all the proceedings had, as well as all the documents filed, testimony and evidence adduced (except the maps and plans as per agreement of counsel filed January 25th, 1872), in the cause wherein the New Orleans, Mobile and Chattanooga Railroad Company is plaintiff and the City of New Orleans, Charles Morgan, Charles A. Whitney, A. C. Hutchison, and George Pandely are defendants, instituted in said court, and now on the records thereof under the No. 19.

In testimony whereof I hereunto set my hand and affix the impress of the seal of said court, at the city of New Orleans, this 5th day of February, A. D. 1872, and of the Independence of the United States the ninety-sixth.

Clerk.

513 State of Louisiana, eighth district court for the parish of Orleans.

No. 4.

NEW ORLEANS, MOBILE AND CHATTANOOGA Railroad Company, appellee, *versus* THE CITY OF NEW ORLEANS, APPELLANT, Charles Morgan, intervenor. } 3701.

J. A. Campbell and J. B. Eustis, attorneys for appellee; Geo. S. Lacey and W. W. King, attorneys for appellant; Miles Taylor and Leovy & Monroe, attorneys for intervenor.

Compiled by J. D. Taylor.

7972. U. S. circuit court. Offered in evidence by the City of New Orleans, and filed June 7th, 1878.

F. B. VINOT, *D'y Clk.*

514 Supreme court of La.

Filed Feb'y 5th, 1872.

M. P. JULIAN,
Dep'y C'rk.

State of Louisiana, eighth district court for the parish of Orleans.

No. 4.

NEW ORLEANS, MOBILE AND CHATTANOOGA Railroad Company
versus
THE CITY OF NEW ORLEANS.

NOTE.—This suit, originally instituted in the fifth district court for the parish of Orleans, was, in conformity with the provisions of the act of the general assembly of the State of Louisiana creating the eighth district court for the parish of Orleans, transferred to the eighth district court.

State of Louisiana, fifth district court for the parish of Orleans.

N. O., M. AND C. R. R. CO.
vs.
CITY OF NEW ORLEANS ET ALS. No. 738.

Petition.—Filed July 6, 1869.

To the honorable the judge of the fifth district of the parish of Orleans, State of Louisiana:

The petition of the New Orleans, Mobile and Chattanooga Railroad Company, a corporation incorporated, organized, and existing under an act of the general assembly of the State of Alabama, and recognized and approved by acts of the general assembly of the State of Louisiana, under which it has a domicil in the city of New Orleans, respectfully represents to your honor:

1. That by several acts of the general assembly of the State of Alabama and Louisiana, your petitioners have been incorporated for the purpose of constructing a railroad or railroads from the city of Mobile to the city of New Orleans and from thence to the State of Texas,
515 with the power to own the right of way, depots, turnouts, and whatever else might be suitable for the works of the company; all of which will more fully appear by the acts of the general assembly of Louisiana relative thereto, approved 19th August, 1868, and 17th February, 1869, as published in the acts of the said general assembly.

2. Your petitioners would further represent that whatever has been imposed as a condition upon the petitioners they have performed. The road which they contemplated between New Orleans and Mobile is under contract, and an important portion of the work has been done in exact fulfilment of the conditions of the charter, and the entire road will be finished before the month of July of the next year; and that the said corporation is using their energy and resources for the extension of the road through Louisiana into the interior of Texas.

3. Your petitioners would further represent that they obtained from the general assembly of Louisiana a grant to the effect following, to be

found in the fifteenth section of an act of the general assembly of 17th February, 1869, being an act to expedite the construction of the railroad of the New Orleans, Mobile and Chattanooga Railroad Company in the State of Louisiana: "And there is hereby granted to the said company the right to locate, construct, maintain, and use a passenger-depot, with office and apartments suitable for its legitimate business, upon the part or portion of the levee or streets and grounds in the city of New Orleans bounded by Canal, Delta, and Poydras streets and a line parallel to and one hundred and fifty feet easterly from Delta street, and for the construction of a freight depot, and for the purpose of its legitimate business, to enclose and occupy the block of ground, parts of streets, and portion of levee in said city bounded by Girod, Water, and Calliope streets and a line parallel to and two hundred and ninety feet easterly from Water street; provided said company shall not enclose or occupy part or portion of the blocks of ground within the said last-named limits which is the private property of individuals until said company has acquired the title themselves."

Your petitioners aver that the possession of said grounds for a depot of their road will be useful and beneficial, and that they have acquired by purchase all of the private property within the boundaries of the said ground of the State as aforesaid, and are now ready to enclose and occupy the same for the purpose mentioned in the said section of the act aforesaid.

4. Your petitioners would further represent that upon the map of the city of New Orleans there is a block of lots, bounded by Girod, Notre Dame, Water and the continuation of Pilié streets, known as 27 A, which has never been sold by the city, nor been enclosed or occupied, which is comprehended in the grant by the State of Louisiana to your petitioners as aforesaid, and has heretofore been used by the public, which is important to the objects and plan of this company, and which they are desirous of holding.

Your petitioners suppose the powers of the State to dispose of the same for the benefit of this company to be unquestionable, and that they have a present right to take possession thereof; but your petitioners are informed that this is not admitted, and that the city authorities, or some portion of the council of the same, held that this property belongs to the city, and the State cannot appropriate it to the use of the company, unless upon the payment of an indemnity or compensation therefor to the city. And your petitioners are further informed, and aver the fact to be, that the city has received and is entertaining propositions for the purchase of the property notwithstanding this
516 State grant, to defeat the same, and that they threaten to frustrate the beneficial legislation of the State aforesaid to gratify some private end of some party who is not unwilling to obstruct your petitioners.

5. Your petitioners would further represent that they have attached to this petition a map or plan of the property described in the grant of the State aforesaid and its relative situation to the streets and public places, and have indicated in the said map the places which have been procured by your petitioners, and that are claimed under the grant. Your petitioners say that they are informed that this land was originally a part of the levee, and that it forms a part of the land referred to in the act of the legislature, No. 257, of the acts of 1850, and that the City of New Orleans is entitled to the administration of the same for the public benefit, and with a power to sell the same for specific objects; but whether the State of Louisiana has conveyed to the corpo-

rate authorities of this city a right paramount to the right of the State, your petitioners are not prepared to admit nor to determine. But your petitioners are entirely willing to perform their entire duty in this behalf, and to pay any compensation to the corporate authorities of the city that may be due, upon the adjustment of the existing question on the subject.

6. Your petitioners would represent to your honor that by their charters they have a right to appropriate lands for depots in private ownership, and in this case the State itself has appropriated the land for the use of this corporation, and that therefore there can be no question open but to ascertain whether the City of New Orleans has a title, and what is the value of that right in connection with or separate from the right granted by the State.

7. Your petitioners state that the difficulty of ascertaining the exact title of the City of New Orleans, and how far the same is subject to the power of the State for disposition, renders it necessary for these petitioners to apply to your honor for relief.

To the end, therefore, that your petitioners may have relief, they pray that the City of New Orleans may be cited to appear before this honorable court, and that the City of New Orleans may show cause, if any they have, why your petitioners should not enclose and occupy such portions of the property aforesaid as may not be in private ownership, but which has been under the control of the city authorities, and for that purpose that the City of New Orleans shall exhibit their title thereto.

Your petitioners would further pray that if the said city should exhibit any right; or any cause issuing from any right to the said property, then that the court would proceed, under the laws of expropriation applicable to this case, to ascertain in a legal and just manner the amount of the compensation which your petitioners shall pay for all of their right within the bounds aforesaid, your petitioners hereby and herein offering to do and perform whatever the court may order in this behalf. Your petitioners pray that the City of New Orleans be enjoined and restrained from bargaining, selling, broking or in any wise alienating or encumbering any of the property described in the State grant above described until the final order and decree of this court; and your petitioners pray for general relief in the premises.

(Signed) L. A. SHELDON,
Attorney for Plaintiffs.

517 *Affidavit.*

STATE OF LOUISIANA,
Parish of Orleans:

Before me, clerk of the fifth district court of the parish aforesaid, personally came William S. Williams, a director in the New Orleans, Mobile and Chattanooga Railroad Company and treasurer of the same, and in charge of the office at New Orleans at this time, who maketh oath and saith that the matters of fact cited in this petition are true to the best of his knowledge, information, and belief.

(Signed) W. S. WILLIAMS.

Sworn to and subscribed before me this fifth July, 1869.

(Signed) AD. DUPRE,
D'y Clerk.

Order.

Let an injunction be granted as prayed for in the foregoing petition, and be served on the mayor and council of the City of New Orleans, upon the plaintiff giving bond, with surety, in the sum of five thousand dollars, conditioned according to law.

New Orleans, July 5, 1869.

(Signed) CHAS. LEAUMONT, *Judge.*

Bond.—Filed July 6, 1869.

Know all men by these presents that we, The New Orleans, Mobile and Chattanooga Railroad Company, as principal, and Michael Hahn, of New Orleans, as security, of the city of New Orleans and State of Louisiana, are held and firmly bound unto the City of New Orleans in the sum of five thousand dollars, lawful money of the United States of America, to be paid to said City of New Orleans, its heirs, executors, administrators and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, administrators, firmly by these presents; sealed with our seals, and dated the fifth day of July, in the year of our Lord one thousand eight*een* hundred and sixty-nine.

Whereas the said New Orleans, Mobile and Chattanooga Railroad Company has this day presented a petition to the honorable the fifth district court for the parish of Orleans praying a writ of injunction—

Now, the condition of the above obligation is that we, the above-bound company and Michael Hahn, will well and truly pay to the said city of New Orleans, the defendant in said action, all such damages as she may recover against us in case it should be decided that the injunction was wrongfully obtained.

(Signed) W. S. WILLIAMS, [L. S.]
For the N. O., M. and C. R. R. Co.

(Signed) MICHAEL HAHN. [L. S.]

Signed, sealed, and delivered in the presence of—

(Signed) J. J. WILLIAMSON.
(") P. COOLEY.

518 *Writ of injunction.—Issued July* 6, 1869.

State of Louisiana, fifth district court for the parish of Orleans.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 738.

To the City of New Orleans, through John R. Conway, mayor, board of aldermen and board of assistant aldermen, greeting:

You are hereby commanded, enjoined and restrained, in the name of the State of Louisiana and of the fifth district court for the parish of Orleans, from bargaining, selling, leasing, or in any wise alienating or encumbering any of the property *described* in the State grant described in the plaintiff's petition, until the final order and decree of this honorable court.

Witness, the honorable Charles Leaumont, judge of our said court, this sixth day of July, in the year of our Lord one thousand eight hun-

dred and sixty-nine, and in the ninety-fourth year of the Independence of the United States.

[SEAL.] (Signed) F. A. LUMINAIS,
D'y Clerk.

Sheriff's returns.

Received July 13, 1869, and on same day, month, and year, at two o'clock p. m., served copy of the within writ of injunction personally on John R. Conway, mayor of the city of New Orleans.

Returned same day.

(Signed) F. PFISTER,
D'y Sheriff.

Received July 13, 1869, and on the same day, month, and year, at five minutes past seven o'clock p. m., served copy of the within writ of injunction on the City of New Orleans herein, through the board of assistant aldermen of the city of New Orleans, through their president, George Pandely, personally.

Returned same day.

(Signed) F. PFISTER,
D'y Sheriff.

Citations.—Issued July 6, 1869.

State of Louisiana, fifth district court for the parish of Orleans.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 738.

To City of New Orleans, through John R. Conway, mayor, the City of New Orleans, through the board of aldermen; the City of New Orleans, through the board of assistant aldermen:

You are hereby summoned to comply with the demand contained in the petition, a copy of which accompanies this citation, or deliver
519 your answer to the same in the office of the clerk of the fifth district court for the parish of Orleans, in ten days after the service hereof.

Witness, the honorable Charles Leaumont, judge of the said court, the sixth day of July, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] (Signed) F. A. LUMINAIS,
D'y Clerk.

Sheriff's returns.

Received July 13, 1869, and on the same day, month and year served copy of the within citation and accompanying petition on the City of New Orleans, through John R. Conway, mayor, personally.

Returned same day.

(Signed) F. PFISTER,
D'y Sheriff.

Received July 13, 1869, and on the same day, month and year, at seven o'clock p. m., served copy of the within citation and accompany-

ing petition on the board of aldermen of the city of New Orleans, through their president, Mr. Wiltz, personally.

Returned same day.

(Signed) F. PFISTER,
Dy Sheriff.

Received July 13, 1869, and on the same day, month and year, at five minutes past seven o'clock p. m., served copy of the within citation and accompanying petition on the board of assistant aldermen of the city of New Orleans, through their president, Geo. Pandely, personally.

Returned same day.

(Signed) F. PFISTER,
Dy Sheriff.

Supplemental petition.—Filed July 15, 1869.

STATE OF LOUISIANA,
Parish of Orleans:

Fifth district court of the said parish of Orleans.

To the honorable the judge of the fifth district court aforesaid:

The New Orleans, Mobile and Chattanooga Railroad Company, a corporation duly established and recognized under the laws of Louisiana, and having its corporate domicil in this State, in New Orleans—

Respectfully represents to your honor that they heretofore filed in this court their petition, whereby they set forth their title under the fifteenth section of the act of the legislature of the State, approved the seventeenth of February, 1869, having for its title an act to expedite the construction of the railroad of the New Orleans, Mobile and Chattanooga Railroad Company in the State of Louisiana, and that the said corporation had fulfilled the conditions by procuring titles to such portions of the land granted therein which is the private property of individuals; and that the said corporation was entitled to the use, occupation, for the purposes of their improvement, the public rights to all of the property therein set forth, which averments and statements, as herein described, are confirmed and renewed.

2. Your petitioner further state that, having complied with the grant of the State in the matter aforesaid, they were prepared to occupy
520 the said lands for the purposes aforesaid, when they were threatened by interference and obstruction by the action of the corporate authorities of the City of New Orleans, and for the purpose of preventing such injuries and illegal molestation they brought their said suit, and obtained from your honor an order for an injunction, the conditions of which order were complied with, and the writ of injunction was duly served upon the proper officers. In addition to which they caused the mayor to be served with a notice and remonstrance against the proposed action of said authorities, and vindicating their rights under the same act.

3. Your petitioners further represent, that notwithstanding the notice aforesaid and the injunction aforesaid the corporate authorities have still entertained the proposition of Charles Morgan to purchase part of the land described in the above petition and included in the bounds of the grant by the legislature, and the same, as your petitioners are informed, has passed the boards, copy of which, as published in

the public papers, is attached and is supposed to be substantially correct, and which is to be presented to the mayor for his action.

4. Your petitioners show to your honor that the ordinance of the said corporation, as passed by the boards and has been or is about to be presented to the mayor, contains untrue, erroneous, and wholly unfounded representations of the title and claims of said Morgan under a supposed purchase of the railroad of the New Orleans, Opelousas and Great Western Railroad Company under a supposed valid proceeding in the circuit court of the United States, in a case where he was sole plaintiff and said corporation was defendant. But your petitioners represent that neither the proceedings in the said court nor the sale by the marshal gave such rights as claimed, and they aver that all of the proceedings in said court were and are without jurisdiction, the sale itself was void, and that a writ of error upon the same is being presented to the Supreme Court of the United States to cause the same to be annulled and held for naught. But if they were all valid, they do not comprehend the matter claimed in the said plan of ordinance, and that by said proceedings no rights were acquired on the east bank of the Mississippi River or in the city of New Orleans, as will fully appear by the said proceedings.

5. Your petitioners aver that the New Orleans, Opelousas and Great Western Railroad Company did not mortgage their ferry grant or privileges, nor was it competent for any court to dispose of the same, nor did they pass by any sale, and all the pretences of the kind set forth are false, fraudulent, and without any legal foundation, and that the same are introduced into the said ordinance to give a colorable pretext for the partial and exorbitant grant to said Charles Morgan, to the wrong and injury of your petitioners.

6. That the grant is partial and exorbitant is apparent by the concluding clause of the first section of the ordinance aforesaid which has passed the boards, whereby, for the property granted, the price is fixed at fifty-four thousand dollars. That your petitioners are ready, willing, and have submitted to the mayor an offer of double the amount, as will appear from a letter hereto attached, marked A, which is a copy of a letter this day placed in the hands of the mayor, before any action on the said ordinance.

7. Your petitioners would further represent that the said ordinance is cunningly formed, to enable the beneficiary to cut off the communications with the depots and other erections which your petitioners have been authorized to make and to diminish their value; for they have provided that no square shall be formed between Notre Dame
521 and Girod streets, thus contemplating the closing of Pilié street between Notre Dame and Girod streets.

8. Your petitioners affirm the validity of their grant from the legislature of the State, and that the attempt to interpose the City of New Orleans as an antagonist and opponent of the State of Louisiana, and as granting rights in obstruction to those given by the sovereign authority of the State is wrongful and pernicious to the well-being and dignity of the State, and calculated to bring contempt upon the public authority.

9. That the grant of the State to expedite and promote public improvement, projected and which is carried on to promote the commercial interest of the State and the city as well as of the whole Union, does give to the petitioners either a full and perfect right or, in any point of view, a right that can be made perfect by compensating the

city for any particular corporate or other right it may have which the legislature cannot dispose of.

10. And so your petitioners in their original petition, and now in this supplemental petition, ask the court to declare contradictorily with the city what is the extent of the power of the State in the matter of disposing of the property aforesaid, and to ascertain what right, if any, exists in the said city independently of said grant. Your petitioners aver that the special particular action of the boards since the filing of the petition of the petitioners, the service of notice on them, and the service of the injunction show a clear and manifest purpose on their part to defeat, if they can, the right of your petitioners to said property and place it in the hands of a favorite of the boards.

11. Your petitioners are ready to submit the question of the value of such rights and claims within their grant to the clauses of their charter relative to the expropriation of property in the hands of corporations or individuals. Your petitioners respectfully ask your honor to require of the said corporation in their answer to set forth any adverse title they have to the property included in the bounds of the grant of the State, as set forth in their original petition and as described in the grant contained in the fifteenth section of the act before referred to, and that they may declare wherein the act of the State is invalid or inoperative; and if upon a view of the same it shall be found that they have any right, that your petitioners may be permitted to proceed and that your honor would act under the clauses contained in their charter (or other legal way) for the attainment of the objects proposed by said grant. The said grant showing fully the objects of the legislature, as well as of this company, in the making of the same, the rights to be exercised, and the estate to be had in the same.

12. Your petitioners state that they had no expectation that the corporate authorities would hinder, delay, or attempt to defeat said grant, and were not aware of any clause adverse to the State until the action of the boards as aforesaid, and that the said boards have manifested, by their disregard of the remonstrances of the petitioners and the injunction of the court, their purpose to make a private sale to a favored party against all remonstrances, of others as well as themselves, that no negotiations with them would have been productive of any result whatever.

13. Your petitioners will further call to the notice of your honor that one of the boards passed this ordinance just before and another just after a judgment of ouster upon the right of a number of them to have their office had been pronounced in this honorable court.

14. Your petitioners crave reference to the acts of incorporation of their body by the legislature of this State, of the 19th of August,
522 1868, and of the 17th of February, 1869, as parts of this petition, with liberty to refer to the same in the published acts.

To the end that justice may be done in the premises, your petitioners pray that the City of New Orleans be made a defendant to this supplemental petition, and that citation of the same may be duly made, and that the said City of New Orleans, its officers and agents, and all persons claiming or to claim under them, be enjoined and restrained from hindering or obstructing or in any manner interfering with your petitioners in the occupation, enclosure, or enjoyment of the lands described in the fifteenth section of the act of the 17th of February, 1869, bounded by Girod, Water, and Calliope streets, and a line parallel to and two hundred and ninety feet easterly from Water street, or Canal, Delta, and Poydras streets, and a line parallel to and one hundred and fifty feet

easterly from Delta street; and that their right to acquire and hold the same be not affected or impaired by any act of said corporation, but that your petitioners be maintained in the same until the final action of this court; and that the mayor be enjoined from signing or approving of said ordinance or any ordinance relative thereto.

And your petitioners further pray of your honor that the corporation, through its proper officers, may answer the following interrogatories as upon facts and articles:

1. Has the corporation any and what right to the property or any part thereof as described in the petition aforesaid and in the fifteenth section of the act? If yea, what portion of the said property is claimed and by what right? Set forth the claim by metes and bounds, and the right and whence derived.

2. Have the corporation, or any branch, received any communication from Charles Morgan or his agents, or adopted any resolution or ordinance respecting the same? Set forth all communications, letters, and copies of all ordinances or resolutions, with the proceedings and dates of or concerning the same.

3. Have any and what communications been made to you by any officer or agent of the petitioners relative to the claim of Charles Morgan or their own? Attach copies of the same, and the date of their reception.

Your petitioners further pray that they may be quieted in their possession and title, and may be allowed to do and perform whatever is proper in their behalf to protect the rights they have under the acts of the legislature, to make them operative, and for such other relief as they may be entitled to.

(Signed) JAMES A. RAYNOR, *President.*

" CAMPBELL SPOFFORD & CAMPBELL,
Of Counsel for Petitioners.

" L. A. SHELDON, *Of Counsel.*

Order.

Let an injunction issue according to the prayer of the petition as well to the coporation of the City of New Orleans, upon the plaintiff giving bond in the sum of five thousand dollars, conditioned as the law directs.

New Orleans, July 15, 1869.

(Signed) CHAS. LEAUMONT, *Judge.*

523 *Letter attached to and made part of the petition.*

NEW ORLEANS, *July* 15, 1869.

SIR: I, on behalf of the New Orleans, Mobile and Chattanooga Rail road in Louisiana, have examined a projected ordinance of the boards of aldermen, and which is to be submitted to you for approval.

The proposed ordinance operates upon property included in the grant of the State to that corporation, as contained in the fifteenth section of the act of the seventeenth February last. This corporation has instituted a suit in the fifth district court of the parish of Orleans, relative to the wrong done to the company by the city authorities. They have also submitted a protest for the consideration of the corporate authorities of the city upon the same subject.

Notwithstanding this, the ordinance has passed the boards, and we take for granted that the city authorities design (so far as the action of

the boards is to be regarded) to defeat, if they can, the action of the legislature.

The purpose of this communication is still to protest against their action, and at the same time to assure the corporate authorities of the city that this company are *proposed* to act with entire good faith to them. If the city corporation has any right which is the subject of sale or disposition of them, within the bounds of the State grant, our corporation is prepared to make compensation therefor according to the law of the State, and such is the subject of their suit.

But without prejudice to our claims under the grant of the State or of any right, we submit to the city that we will pay to the corporation for the lands, property and riparian rights, including the proposed sale and grant to Charles Morgan, in the first and second sections of that ordinance, the sum of one hundred and eight thousand dollars.

This will embrace a settlement of said suit for the property embraced in it, and will place the corporation of the city in possession of a price greatly beyond what is proposed by Charles Morgan.

To the extent of the difference of the city authorities, if this ordinance passes and becomes operative, make a donation to Charles Morgan, while the burden of the suit must be borne by them which has been already commenced.

Very respectfully,
(Signed) WM. S. WILLIAMS.

Hon. J. R. CONWAY,
Mayor of the City of New Orleans.

Bond.—Filed July 15, 1869.

Know all men by these presents, that we, the New Orleans, Mobile and Chattanooga Railroad Company, as principal, and Thomas B. Lee, as surety, of the City of New Orleans and State of Louisiana, are held and firmly bound unto the City of New Orleans, its executors, administrators, heirs and assigns, in the sum of five thousand dollars, lawful money of the United States of America; for which payment, well and truly to be made to the party last aforesaid, its executors, administrators, heirs and assigns, we bind ourselves in solido, and each of our executors, administrators, heirs and assigns, firmly by these presents.

Sealed with our seals, and dated the fifteenth day of July, 1869.

Whereas the said New Orleans, Mobile and Chattanooga Railroad Company has this day presented a supplemental petition to the
524 fifth district court of the parish of Orleans praying a writ of injunction to issue against the City of New Orleans, its officers and agents:

Now, the condition of the above obligation is, that we, the above-bound principal and surety, will well and truly pay to the said City of New Orleans all such damages as the city of New Orleans may recover against us, in case it should be decided that the said injunction was wrongfully obtained.

The New Orleans, Mobile and Chattanooga Railroad Company, by—
(Signed) JAMES A. RAYNOR, *President.* [L. S.]
" THOS. B. LEE. [L. S.]

Signed, sealed and delivered in the presence of—
(Signed) J. J. WILLIAMSON.
" L. A. SHELDON.

Writs of injunction.—Issued July 15, 1869.

State of Louisiana, fifth district court for the parish of Orleans.

THE N. O., M. & C. R. R. CO. *vs.* THE CITY OF NEW ORLEANS. } No. 738.

The State of Louisiana to John R. Conway, mayor of the city of New Orleans; to the City of New Orleans, through John R. Conway, mayor, its officers and agents, and all persons claiming or to claim under them, greeting:

You are hereby commanded, enjoined and restrained, in the name of the State of Louisiana and of the fifth district court for the parish of Orleans, from hindering or obstructing or in any manner interfering with the petitioner herein, the New Orleans, Mobile and Chattanooga Railroad Company, in the occupation, enclosure or enjoyment of the lands described in the fifteenth section of the act of the seventeenth of February, 1869, bounded by Girod, Water and Calliope streets, and a line parallel and two hundred and ninety feet easterly from Water street, and bounded by Canal, Delta and Poydras streets, and a line parallel to and one hundred and fifty feet easterly from Delta street; and you are further enjoined to commit no act which may impair the right of said plaintiffs from holding and acquiring the same.

And you are so to remain enjoined and restrained until the further order of this honorable court.

Witness the honorable Charles Leaumont, judge of our said court, this fifteenth day of July, in the year of our Lord one thousand eight hundred and sixty-nine, and in the ninety-fourth year of the Independence of the United States.

[SEAL.] (Signed) PHILIP POWER, JR., *Dy Clerk.*

Sheriff's returns.

Received July 15, 1869, at half past eight o'clock p. m., and on the same day, at ten minutes after eleven o'clock p. m., served a copy
525 of the within writ of injunction personally on John R. Conway, mayor of the city of New Orleans, defendant herein.

Returned same day.

(Signed) W. WALSH, *Dy Sheriff.*

Received July 15, 1869, at half past eight o'clock p. m., and on the same day, at ten minutes past eleven o'clock p. m., served a copy of the within writ of injunction on the City of New Orleans, its officers, agents, and all persons claiming under them, by personal service on John R. Conway, mayor of New Orleans.

Returned same day.

(Signed) W. WALSH, *Dy Sheriff.*

Citations.—Issued July 16, 1869.

State of Louisiana, fifth district court for the parish of Orleans, in the city of New Orleans.

N. O., M. AND C. R. R. Co. *vs.* THE CITY OF NEW ORLEANS. } No. 738.

To honorable John R. Conway, mayor of the city of New Orleans; the City of New Orleans, through John R. Conway, mayor:

You are hereby summoned to comply with the demand contained in the supplemental petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fifth district court for the parish of Orleans, in ten days after service hereof.

Witness the honorable Charles Leaumont, judge of the said court, the 16th day of July, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] (Signed) PHILIP POWER, JR., *Dy Clerk.*

Sheriff's returns.

Received July 16, 1869, and on the 17th day, same month and year, served copy of the within citation and accompanying supplemental petition, personally, on John R. Conway, mayor of New Orleans.

Returned same day.

(Signed) F. PFISTER, *Dy Sheriff.*

Received July 16, 1869, and on the 17th day, same month and year, served copy of the within citation and accompanying supplemental petition on the City of New Orleans, through the mayor, John R. Conway.

Returned same day.

(Signed) F. PFISTER, *Dy Sheriff.*

526 *City ordinance, providing for the sale of square 27 A to Charles Morgan.—Filed July 15, 1869.*

Whereas, the legislature of Louisiana, by acts approved April 30, 1853, and March 15, 1855, enacted that the New Orleans, Opelousas and Great Western Railroad Company should be and were thereby "authorized and empowered to locate, construct, maintain and operate a ferry or ferries from their depot property on the right bank of the Mississippi River to one or more points within the corporate limits of the city of New Orleans; and that the parish of Orleans, right bank of the Mississippi River, and the City of New Orleans should grant, cede, and donate to said company, within their respective jurisdictions, the right of landing for said ferry or ferries at company's depot property, on the right bank of the Mississippi River and at one or more points within the corporate limits of the said city."

And whereas, the contemplated grand division of the railroad of the said company between Algiers (opposite the city of New Orleans) and Berwick's Bay, then in full operation, and constructed by the said company in pursuance of their charter, together with the road-beds of the

main track and branches, and also all the depots and lands specially appertaining to them, and all the buildings, wharves, and all the equipments and franchises belonging and appertaining to the said division of the said road, were mortgaged, by authority of law, to secure the payment of a large sum of money and of the interest to accrue thereon, by public act of mortgage passed before Selim Magner, notary public in and for the city of New Orleans and parish of Orleans, on the first day of April, 1859.

And whereas, default having been made in the payment of the interest of the said sum of money, the said railroad, together with the roadbeds of the main track and branches and all the depots and lands specially appertaining to them, and all the buildings, wharves, and all the equipments and franchises belonging and appertaining to the said division of the said railroad, were seized and sold at public sale, according to law, to satisfy the said mortgage debt.

And whereas, Charles Morgan, at the said public sale, became the purchaser of the said grand division of the said railroad constructed by the said company and mortgaged as aforesaid, together with all the depots and lands, all the buildings and wharves, and all the franchises belonging and appertaining thereto, and is now the legal owner and possessor of the same.

And whereas, the said grant made by the legislature of the State of Louisiana, as aforesaid, to the said New Orleans, Opelousas and Great Western Railroad Company, of the authority and power to locate, construct, maintain, and operate a ferry or ferries from their depot property on the right bank of the Mississippi River to one or more points within the corporate limits of the city of New Orleans, was made with the intent and design to insure the safe, certain and cheap transit of freight, passengers and merchandise across the Mississippi River, from the city of New Orleans to the depot property of the said company on the right bank of the Mississippi River, and from the depot property of the said company on the right bank of the Mississippi River to the city of New Orleans.

And whereas the said intent and design of the legislature has not been realized in consequence, in part, of the failure of the city
527 of New Orleans and of the parish of Orleans, right bank of the Mississippi River, to make such grants, cessions, etc., with reference to the right of landing for said ferry or ferries, and to the spaces allowed for landing for the use of said railroad, and in part to the inability of the said company to provide the necessary means for the "safe, certain, and cheap transit of freight, passengers, and merchandise," which grew out of the disturbed condition of the country resulting from the late unhappy war.

And whereas the said Charles Morgan, in his capacity as owner of the said railroad, together with all the depots and lands, all the buildings and wharves, and all the rights and franchises belonging and appertaining to the said road, is now desirous of locating and establishing ferries between the depot property belonging to him and appertaining to the said railroad on the right bank of the Mississippi River, at the town of Algiers, and the town of Gretna, and the city of New Orleans, at or near the point where Girod street, in the first district, comes to the river, and of maintaining and operating the same so as to subject the freight and passengers from the city of New Orleans to be carried over the said railroad, and the freight and passengers coming by the said railroad to the city of New Orleans to the least possible delay and detention, and as will enable him to carry such freight

and passengers across the Mississippi in a manner most convenient and advantageous to the public and the most economical to himself:

Therefore, in order to carry out and give effect to the provisions contained in the said acts of the legislature, entitled "An act supplementary to an act to incorporate the New Orleans, Opelousas and Great Western Railroad Company," approved April 30, 1853, and "An act to repeal the proviso of the second section of an act entitled 'An act supplementary to an act to incorporate the New Orleans, Opelousas and Great Western Railroad Company,'" approved March 13, 1855—

Be it ordained by the common council of the city of New Orleans, That the city of New Orleans will sell, and hereby agrees to sell and to convey and deliver to Charles Morgan, his heirs and assigns, all that portion of ground lying and being in the first district of the city of New Orleans, between Water street and the Mississippi River, and bounded above by a line, being the prolongation of the lower line of Notre Dame street, and below by a line, being the prolongation of the upper line of Girod street, as the said Notre Dame and Girod streets respectively now exist and extend from the said Water street to the Mississippi River, together with all the riparian rights and privileges in any wise belonging or appertaining to the same, for and in consideration of the price and sum of fifty-four thousand dollars($54,000), to be paid to the city by the said Charles Morgan at the time of the execution of the act to be prepared to carry out this ordinance; provided, and it being well understood in making the said sale, that if at any time it becomes expedient or necessary, in the opinion of the common council of the city of New Orleans, to lay out and extend one or more streets through the said portion of ground parallel with Water street aforesaid, that then and in that case the said Charles Morgan shall not be entitled to claim or receive any compensation for the land which may be taken for such street or streets; provided that any such street or streets shall not exceed sixty feet in width, and that no square which shall be formed between the said Notre Dame and Girod streets shall have a front of less than three hundred feet on the said Notre Dame and Girod streets respectively.

2d. Be it further ordained, etc., That, for the reasons set forth in the preamble to this ordinance, the city of New Orleans grants and
528 cedes to the said Charles Morgan, in his capacity of owner and proprietor of said railroad, his heirs and assigns, for the purpose of establishing, locating, constructing, maintaining, and operating a ferry or ferries between the depot property of the said railroad at Algiers and Gretna belonging to him, on the right bank of the Mississippi River, and the city of New Orleans, the exclusive right of landing on that portion of the river front of the city constituting the port of the city of New Orleans, beginning at a point one hundred and thirty-five (135) feet below the lower line of Girod street, and extending up the river to a point one hundred and thirty-five feet above the upper line of Notre Dame street, and to the exclusive use, in the same manner and with the same rights and privileges as are now granted to the New Orleans, Mobile, and Chattanooga Railroad Company by the joint resolution of the legislature approved sixth of March, 1869, of the space on the said river front, including the landing between the said points of the batture, wharves, levee, and all the other space extending from the said front on the said river, and running back between lines drawn from the said points and parallel with Girod and Notre Dame streets, the lower portion of the same to Water street and the upper portion to Pilié street, for the erection of depots and other

buildings required for the accommodation of freight, and of the cars and railroad trains to be used and employed in its transportation, and making connections with the different railroads terminating in the neighborhood of Girod street, and for any and all other purposes connected with the carrying on of the business of the said ferries for the transportation of freight and passengers across the Mississippi River; provided—

1st. That the said Charles Morgan, his heirs or assigns, shall locate, establish, construct, maintain and operate a ferry or ferries to run and ply between the depot property belonging to him, on the right bank of the Mississippi River, at Algiers or Gretna, and the said space on the river front of the city of New Orleans, the use of which is granted and ceded to him, as aforesaid, with the means and appliances for carrying passengers, freight, and loaded or unloaded railroad cars across the Mississippi River; and provided—

2d. That the said Charles Morgan shall renounce and yield and give up to the city of New Orleans all the rights and privileges to which he is now entitled, as the purchaser of the said railroad, under the ordinances Nos. 2290 and 2890, or under ordinance No. 791, new series, or under any other ordinance of the city of New Orleans; provided—

3d. That the portion of the landing herein granted for the purpose of running and operating the trains as aforesaid, be restricted to that purpose exclusively, and that no other steamers or vessels of any kind whatever shall be permitted to land at said landing, and that in no manner shall the privileges herein granted be used to the prejudice of the city's right to collect dues or wharfage from other steamers, should Charles Morgan permit other steamers to land at said portion of the landing.

3d. Be it further ordained, etc., That for the purpose of facilitating the said Charles Morgan in carrying on the business of the said railroad, the city of New Orleans grants and cedes to the said Charles Morgan, his heirs, and assigns, the right to construct and lay down, within the space described in the foregoing section of this ordinance, all the tracks and transfer tracks, turnouts, and switches, and to erect and build all the depots, warehouses, and other buildings required for the convenient prosecution of the business of the said railroads and the carrying on of the said ferry or ferries, and to lay tracks, transfer tracks, turnouts, and switches along, upon or across the streets
529 which may now or hereafter run through the said space described as aforesaid, or be contiguous to the same, or to the portion of ground sold to the said Charles Morgan as described and set forth in the first section of this ordinance, or to the other two squares of ground, the property of the said Charles Morgan, bounded as follows, one by Front, Delta, Notre Dame, and Girod streets, and the other by Delta, Water, Girod, and Notre Dame streets, or of any other squares of ground in the same neighborhood which may be necessary for forming a junction or connection with the New Orleans, Jackson and Great Northern Railroad, or with the Pontchartrain Railroad, or with the New Orleans, Mobile and Chattanooga Railroad.

4th. Be it further ordained, etc., That the said Charles Morgan shall be required to bind himself, his heirs or assigns, at his or their own expense: 1st. To maintain the wharf or wharves for landing on the river front on the said space the exclusive right to the use of which is granted and ceded to him, his heirs, and assigns as aforesaid in the second section of this ordinance, in perfect good order and condition. 2d. To conform to the grades and levels to be established by the city sur-

veyor of New Orleans in the construction of the said railroad tracks, turnouts, switches, etc., and 3d. To do whatever is necessary to prevent the laying or the existence of such railroad tracks, turnouts, switches, etc., or other works of any description, from disturbing or impairing the drainage and flow of water, or from unnecessarily impeding the passage of vehicles or passengers through the said streets or impairing the usefulness of the same.

5th. Be it further ordained, etc., That the city surveyor be and he is hereby directed to prepare plans or drawings representing the said portion of ground sold as aforesaid to the said Charles Morgan, and the said space on the river front of the city, the use of which is granted and ceded to the said Charles Morgan, his heirs and assigns, as aforesaid, to be annexed to the notarial act to be executed to carry out and give effect to this ordinance.

6th. Be it further ordained, etc., That the mayor be and he is hereby authorized and empowered to enter into a contract with the said Charles Morgan agreeably to and in accordance with the provisions of this ordinance.

7th. Be it further ordained, etc., That all ordinances or parts of ordinances in conflict with this ordinance be, and the same are hereby, repealed.

The reading of the ordinance having been concluded a motion to adopt upon its first reading was decided affirmatively. Upon a motion to suspend the rules to place the ordinance upon its second reading the yeas and nays were called, resulting as follows:

Yeas—Messrs. Rose, Lagan, Walker, Davis, Camp, Stringer, Barnes, Pasley, Wynne, Farrell, Breen, and Pandely—12.

Nays—Messrs. Kearney and Grandpre—2.

The motion to suspend the rules having received the necessary two-third vote was declared adopted, when the ordinance was read a second time, and upon its conclusion a motion to adopt upon its second and first reading was carried unanimously, the vote standing as follows:

Yeas—Messrs. Kearney, Rose, Lagan, Walker, Davis, Camp, Stringer, Grandpre, Barnes, Pasley, Wynne, Farrell, Breen, and Pandely—14.

Nays—None.

Mr. Grandpre here gave notice of his intention, at the next meeting, to move a reconsideration of the vote by which the above ordinance had been adopted.

530 *Exception.—Filed July 26, 1869.*

Fifth district court for the parish of Orleans.

N. O., M. AND C. R. R. CO.
vs.
THE CITY OF NEW ORLEANS.

And now comes into this honorable court the City of New Orleans, a political corporation duly chartered by law, defendant herein, and for exception to the petition herein filed on the 6th day of July, 1869, and to the supplemental petition filed on the 15th July, 1869, and to the right of the New Orleans, Mobile and Chattanooga Railroad Company to maintain or proceed upon the said petition against the City of New Orleans, this defendant says:

That the said New Orleans, Mobile and Chattanooga Railroad Company, in their said petitions, has alleged and set forth two separate and distinct causes of action against defendant with respect to the property described therein, as follows, to wit:

1. That they are the absolute owners of the said property, and, as such, are entitled to possess, enjoy, and dispose of the same, and now claim it in that capacity; and, 2d, that they have a right to proceed at law to expropriate the said property as belonging to some other person or intelligent being than themselves, and to have the same taken out of the possession of any actual owner and placed in their possession and under their control; and they claim, and can only claim, to exercise the right to *ap*propriate the property on the ground that they are not the owners of the said property; that the said two causes of action are contrary to and exclusive of each other, and that the said City of New Orleans is in law permitted to refuse to plead to the merits until the said New Orleans, Mobile, and Chattanooga Railroad Company shall have made its selection and choice as to which of the said two causes of action it means to proceed under.

Wherefore the defendant prays that the exception may be maintained, and that the said New Orleans, Mobile and Chattanooga Railroad Company may be ordered to amend its petitions so as to present only one cause of action, and that in default thereof, within a period to be fixed by this honorable court, the said petition be dismissed.

Now, for further exception to other portions of said petitions, this defendant says: That the New Orleans, Mobile and Chattanooga Railroad Company had and has no right to embody in the said petition the matter contained in the fourth clause, because, 1st, this court can take no cognizance of or exercise any jurisdiction over the proceedings referred to therein as having been carried on under the authority of the circuit court of the United States, and which are, as alleged therein, now pending in the Supreme Court of the United States on a writ of error; and, 2d, the validity of the sale referred to therein as having been made by the said Charles Morgan, under the authority of the said proceedings in the circuit court of the United States, cannot be inquired into by this court unless the said Charles Morgan be made a party to this suit.

Wherefore the said City of New Orleans prays that the said matter contained in the said clause No. 4 of plaintiff's petition may be stricken out of the said petition as impertinent in this cause, and illegally introduced into the same, and that the said City of New Orleans may,
531 by an express order of this honorable court, be dispensed from answering the same, or any part thereof.

And, for further exception to parts of the said petitions, the said City of New Orleans says:

That the said New Orleans, Mobile and Chattanooga Railroad Company has no right in law to call on this court to require the City of New Orleans to set forth any special matter in the answer which the said city may file in this case as claimed in the eleventh clause of the said supplemental petition, or to call on this defendant to make on oath any such answer, setting up matter of defence to the petition, or to either of them: that plaintiff has the right to propound interrogatories on the facts and articles to defendant, in order to obtain answers thereto, on oath, to be used as testimony in support of their demand; that the interrogatories propounded to the said City of New Orleans in the supplemental petition, and numbered 1, 2, and 3, do not specify any particular fact or facts relating to the rights of said city to the property

referred to, or to the nature or character of any communication from Charles Morgan, or from petitioner, or of any resolution or ordinance, or of letters, and that in the premises the said interrogatories on facts and articles which a party has the right to propound to the other party in the course of judicial proceedings under the laws of Louisiana.

Wherefore, the said City of New Orleans prays that the said clause No. 11 contained in the said supplemental petition and the said interrogatories may be stricken out from the said supplemental petition, and that the said City of New Orleans may, by an express order of this court, be dispensed from making any special answer, or any answer on oath, to the said petition or supplemental petition, or from answering the said interrogatories or any portion of the same.

(Signed) HENRY J. LEOVY,
City Attorney for Defendant.

Order: Rule.—Minutes August 4, 1869.

Fifth district court for the parish of Orleans.

N. O., M. AND C. R. R. Co.
vs.
THE CITY OF NEW ORLEANS.

On motion of Henry J. Leovy, city attorney, of counsel for defendants, and on representing that by article 307 of the Code of Practice, dhfendants may have injunctions dissolved when the dissolution will not work irreparable injury, provided the defendants permit bond with good and solvent security, and on further representing that defendant herein desires to avail itself of the said remedy, and to have the injunctions herein taken dissolved, and that by section 131 of the act of 1856, No. 164, commonly called the city charter, the City of New Orleans is dispensed from furnishing bond or security in all judicial proceedings:

It is ordered that plaintiffs show cause on Wednesday next, the 11th day of August, why the injunction herein taken should not be dissolved, as provided by article 307 of the Code of Practice, but without bond, the city being exempted from furnishing the same.

532 *Sheriff's return.*

Received August 4, 1869, and on the sixth of same month and year served copy of the within rule on New Orleans, Mobile and Chattanooga Railroad Company, plaintiff herein, at their office at Gallier court, Common and Carondelet streets, by personal service on H'y Van Vleck, engineer of said company, the president and treasurer of said company being absent from the city at the time of said service.

Returned same day.

(Signed) GEO. H. TARDY,
D'y Sheriff.

Rule continued.—Minutes August 11, 1869.

Present, the Hon. Chas. Leaumount, judge.

N. O., M. AND CHAT. R. R. Co.
vs.
CITY OF NEW ORLEANS.

On motion and by consent of counsel the rule in this case was or-

dered to be continued to Wednesday, October 27, 1869, at 10 o'clock a. m., and that no other rule be taken to set aside the injunction herein.

Exception.—Filed October 22, 1869.

In the fifth district court for the parish of Orleans.

N. O., M. AND CHAT. R. R. Co. *vs.* CITY OF NEW ORLEANS. } No. 738.

Now comes the City of New Orleans, by J. R. Beckwith, city attorney, and for exception to said plaintiff's demand herein, saith that said plaintiff ought not to further have and maintain its said action against said defendant in this behalf, for it saith that, all and singular, the allegations of fact in said petitions, original and supplemental petition, contained and properly pleaded and set forth therein are not, if taken as true (which said defendant in no wise admits), sufficient in law to entitle said plaintiff to further maintain the said action against said defendant, and to demand the relief in said petition demanded.

That said plaintiff is not in law permitted to assert said alleged right by said plaintiff claimed or asserted in said petition in manner and form as in said action demanded, but is by law required to pursue and assert the same in another and different manner and form.

That this court has no authority in law to expropriate land for any purpose or fix the compensation therefor, as demanded in said action.

Wherefore said defendant prays judgment that said action be dismissed, that the injunction herein issued be dissolved, annulled and set aside, with judgment against the said plaintiff, with costs, and for general relief, etc.

(Signed) J. R. BECKWITH,
City Attorney.

533 *Rule continued.—Minutes October* 27, 1869.

Present, the honorable Charles Leaumont, judge.

N. O., M. AND CHAT. R. R. Co. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 738.

The rule in this case was ordered to be continued indefinitely.

Exception continued.—Minutes January 15, 1870.

Present, the honorable Charles Leaumont, judge.

N. O., M. AND CHAT. R. R. Co. *vs.* CITY OF NEW ORLEANS. } No. 738.

The exception in this case is continued.

NOTE.—The proceedings in the fifth district court end here, the case having been transferred to the eighth district court for the parish of Orleans in conformity with the provisions of the act creating the eighth

district court, the case bearing the No. 4 on the docket of the said eighth district court.

Motion and order fixing exception.—Minutes March 26, 1871.

Eighth district court for the parish of Orleans.

N. O., M. AND C. R. R. Co. *vs.* THE CITY OF NEW ORLEANS. } No. 4. No. 738 of the fifth district court. Transferred.

On motion of J. R. Beckwith, city attorney—
It is ordered that the exception filed in this case be fixed for trial on 6th day of April, 1871, at 10 o'clock a. m., and that parties be notified.

Sheriff's return.—Filed April 1, 1870.

Received March 28, 1870, and on the 29th day, same month and year, served a copy of the within notice on the City of New Orleans, through its mayor, John R. Conway, esq., in person.
Returned same day.
(Signed) F. PFISTER,
D'y Sheriff.

534 *Exception submitted.—Minutes April 7, 1871.*

Present, the Hon. H. C. Dibble, judge.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS. } No. 4.

The exception in this case fixed for this day came on.
Present, Campbell, Spofford & Campbell, for plaintiff; J. R. Beckwith and Miles Taylor, for defendant.
After hearing pleadings and arguments of counsel the court took the matter under advisement.

Exception referred.—Minutes April 9, 1870.

Present, the Hon. H. C. Dibble, judge.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS. } No. 4.

In the matter of the exception in this case submitted to the court for determination, the court, for the reasons orally assigned this day in open court—
Ordered, that the exceptions filed herein on the 26th July and 22d October, 1869, and argued and submitted 6th April, 1870, be referred to the merits of the cause.

Petition of intervention of Charles Morgan.—Filed July 30, 1870.

Eight district court, parish of Orleans.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS. } No. 4.

To the honorable the eighth district court of the parish of Orleans, State of Louisiana:

The petition in intervention of Charles Morgan, a citizen of the State of New York, residing in the city of New York, in the said State, who now repuires to be permitted to become a party in the above-entitled suit to resist the claims of the said New Orleans, Mobile and Chattanooga Railroad Company, and of the State of Louisiana, asserted through the attorney-general, who assumes to act for the same, the plaintiffs therein, and for the protection and establishment of his rights, involved therein, respectfully represents, that by the adjudication at a public sale in a certain suit entitled "Charles Morgan vs. The New Orleans, Opelousas and Great Western Railroad Company," No. 5788 of the docket of the United States circuit court for the district of Louisiana, made to him on the 25th day of May, 1869, according to law, your petitioner became the owner and possessor of the completed grand division of the railroad of the said New Orleans, Opelousas and
535 Great Western Railroad Company, then in full operation between the city of New Orleans and Berwick's Bay, beginning at what was then known as "Algiers," opposite the city of New Orleans, constructed by the said company in pursuance of their charter, being a distance of eighty miles, together with the road-beds of the main tracks and branches, and also all the depots and lands appertaining to them, all the buildings, wharves, and all equipments and franchises belonging to and appertaining to the said division of the said railroad, as will be seen by reference to a transcript of the proceedings in the said suit No. 5788 of the docket of the circuit court of the United States for the district of Louisiana, which is herewith filed, marked "A," and that as the owner and possessor of the sail railroad and the said franchises, he was, and is now in law, entitled to maintain, run and operate the said railroad for the transportation of freight and passengers, and to locate, construct, maintain, and operate a ferry or ferries from the depot property appertaining to the said railroad, on the right bank of the Mississippi River, to one or more points within the corporate limits of the city of New Orleans, and to the right of landing for said ferry or ferries at the said depot property, on the right bank of the Mississippi River, and at one or more points within the corporate limits of the said city of New Orleans; and of using the spaces allowed by the said city for the use of the said railroad and for the convenience of the travel and transportation by said railroad.

And your petitioner further represents, that after he became the owner and possessor of the said railroad, and of the rights and franchises appertaining to the same, he found that all the arrangements for the transportation across the Mississippi River of freight and passengers were of the simplest description and inadequate to effect it in a manner convenient and advantageous to the business and traveling public, and at a reasonable cost; that, to carry out the intention of the legislature, as passed in the second section of the said act, approved on the 30th day of April, 1853, "to insure the safe, certain and cheap

transit of freight, passengers and merchandise," carried by the said railroad across the Mississippi River, your petitioner, as the successor to the rights and franchises of the said New Orleans, Opelousas, and Great Western Railroad Company, as aforesaid, by a particular title, was ready and willing to make such preparations for the transportation of freight and passengers across the said river, with the aid of the mechanical appliances of the day, that the freight to go over the said railroad from New Orleans should be received and placed in the cars in which it is to be transported on this side of the river, and not be again disturbed until it reached its destination; and that the cars with freight for the city should be brought over the river so that the bulk would not be broken until the freight was in the city for delivery, if the city would give him the possession and control of such portions of the bank of the river, and of the land adjacent thereto, as would be required for the erection of the warehouses and other buildings necessary for the accommodation of the freight to be carried and of the cars to be employed in carrying it, and for the landing of the boats engaged in the business of carrying freight and passengers, or passengers alone, across the river, and your petitioner should be assured of the possession and control of such portions of the banks of the river, and of the land adjacent thereto, as might be set apart for those purposes, so long as the said railroad continued to exist and was kept in operation, and such possession and control was necessary for the successful prosecution of the business of the said railroad, and would sell him at a fair
536 price the square of ground, the property of the city of New Orleans, marked "27 A" on the surveys of the city, bounded by Notre Dame, Girod and Water streets, and the projected line of Pilié street, with the riparian rights attached to it, so that, with the said square, and with the two other squares already owned by him, bounded respectively by Front, Delta, Notre Dame, and Girod streets, and by Delta, Water, Girod and Notre Dame streets, he would have space enough for the erection of the depots and other buildings required for the accommodation of freight, and of the cars and railroad tracks to be employed and used in its transportation, and for other purposes connected with the successful carrying on of the business of the said railroad.

That on or about the 29th day of June, 1869, through his agents, Chas. A. Whitney & Co., petitioner addressed a communication to the mayor and members of the common council of the city of New Orleans, a copy of which is herewith filed, marked "B," in which your petitioner informed them of his being ready and willing to make the said improvements in a reasonable period of time, at his own expense, if the city of New Orleans would sell him the said square of ground, with the riparian rights attached to the same, and would accord to him the rights and privileges with respect to the possession and control, for the purposes indicated, of the portion of the river front of the city of New Orleans, beginning at a point one hundred and thirty-five feet below the lower line of Girod street and extending one hundred and thirty-five feet above the upper line of Notre Dame street, and running back between lines parallel with Girod and Notre Dame streets, the upper portion of the same to Pilié street, and the lower portion to Water street, agreeably to the provisions of the act of the legislature of the State of Louisiana entitled "An act supplementary to an act to incorporate the New Orleans, Opelousas and Great Western Railroad Company," approved April 30, 1853, and to give effect to that act, with full power to enclose and occupy so set apart, for his exclusive use, in his capacity

of successor of the said company in carrying on the business of the said railroad, in the same manner and with the same privileges as were granted to the New Orleans, Mobile and Chattanooga Railroad Company by the joint resolution of the legislature of the State approved on the 6th day of March, 1869; and that if the city sold him the said square and granted and ceded to him the said rights and privileges to be used under the provisions of the said act, approved April 30, 1853, as aforesaid, then your petitioner would relinquish all the advantages which resulted from the passage of ordinances No. 2890 or 2290 and No. 799, new series, or any other, in relation to the exercise or enjoyment of any right to the use of other portions of the river front of the city for ferry landings for the use of the New Orleans, Opelousas and Great Western Railroad Company.

And your petitioner further represents that his said proposition to the city of New Orleans was considered by the city council of New Orleans; that on the 6th day of July, 1869, the board of assistant aldermen of the said city of New Orleans passed an ordinance, No. 1492, new series, in which, in order to carry out and give effect to the provisions contained in the said act of the legislature of Louisiana, approved April 30, 1853, and March 15, 1855, as aforesaid, it was ordained by the common council of the city of New Orleans that the city of New Orleans agreed to sell and to convey and deliver to your petitioner the said square of ground mentioned in the said proposition, and that, for the reasons set forth in the preamble to the said ordinance, the city of New Orleans granted and ceded to your peti-
537 tioner in his capacity of owner and proprietor of the said railroad, for the purpose of establishing, constructing, maintaining, and operating a ferry or ferries, as aforesaid, the exclusive right of landing on the said portion of the river front of the city of New Orleans, and to the exclusive use, as aforesaid, of the space extending back from said river front between parallel lines, as aforesaid, on the lower portion of the same to Water street, and on the upper portion to Pilié street, as fully detailed in the said ordinance No. 1492, new series, a copy of which is herewith filed, marked "C;" that the said New Orleans, Mobile and Chattanooga Railroad Company instituted a suit against the city of New Orleans in the fifth district court of the parish of Orleans, No. 738 of the docket of the said court, in which they alleged that in virtue of a grant made to them by the State of Louisiana by the fifteenth section of an act entitled "An act to expedite the construction of the railroad of the New Orleans, Mobile and Chattanooga Railroad Company in the State of Louisiana," approved February 17, 1869, they had the right to enclose and occupy the blocks of ground, parts of streets and portions of levee in the said city of New Orleans bounded by Girod, Water and Calliope streets, and a line parallel to and two hundred and ninety feet easterly from Water street; that the said portion of ground known as "27 A," and bounded by Girod, Notre Dame, Water, and the continuation of Pilié street, was comprehended in the said grant; that the city of New Orleans had received and was entertaining propositions for the purchase of the said property, and prayed for and obtained an injunction from the said fifth district court to enjoin and restrain the said city of New Orleans "from bargaining, selling, leasing, or in any wise alienating any of the property described in the said grant," as will be seen by reference to the petition filed in the said above-entitled suit, and of the order for the injunction made thereon.

And your petitioner further represents that the said injunction was

served upon the said city, and that afterwards, on or about the 13th of July, 1869, the board of aldermen acted on the said ordinance, and after amending the same as originally passed by the board of assistant aldermen, by providing that the mayor should not enter into and execute the contract provided for in the said ordinance until the said injunction should have been dissolved or set aside according to law, and declaring that in either event the said ordinance should be operative and binding from the date of its passage, and that it was the intent and design of the common council to suspend the binding force and effect of the said ordinance only until the said injunction is dissolved or set aside according to law, and upon no other contingency or condition whatsoever, the said ordinance was passed by the board of aldermen as amended; that the said amendment was concurred in by the board of assistant aldermen on the said 13th day of July, 1869; that the said ordinance was approved by the mayor of the city of New Orleans on the 15th of July, 1869, and that the same was duly promulgated in the official journal of the city of New Orleans on the 17th day of July, 1869.

And your petitioner further represents that by a public act passed before Selim Magner, notary public in and for the city of New Orleans, on the 17th day of July, 1870, an authentic copy of which is herewith filed, marked "D," your petitioner, by his agent, Charles A. Whitney, declared that whereas ordinance No. 1492, new series, approved by his honor the mayor on the 15th of July, , duly published in the official journal of this city, the Commercial Bulletin, the city of New Orleans agreed to sell unto petitioner certain land in front of this city, for a stipulated price, and under the clauses and conditions contained in said ordinance,
538 a published copy of which was taken from the official journal, and was thereto annexed as part of the said act; and whereas the said Whitney, for and in the name of your petitioner, was desirous of accepting said ordinance, and to cause your petitioner to comply with all and singular the clauses and conditions therein contained, therefore he, the said Whitney, in his aforesaid capacity, and in the name of your petitioner, did accept the said ordinance in all its contents and details, and did thereby bind your petitioner to comply faithfully with all and singular the conditions and clauses and stipulations therein contained; that by a letter addressed to the Hon. J. R. Conway, mayor of the city of New Orleans, and dated on the 20th of July, 1869, by Chas. A. Whitney & Co., petitioner's agents, and which was accompanied by an authentic copy of the said public act, and which said letter (a copy of which is herewith filed, marked A 1) and said authentic copy were delivered to the said mayor on or about the said 20th of July, 1869, the said city of New Orleans was informed of your petitioner's acceptance of the said ordinance. And your petitioner now avers that by the said proposition made as aforesaid by your petitioner to the said city of New Orleans, and the passage of the said ordinance No. 1492 by the said city of New Orleans, and the acceptance of the said ordinance by your petitioner then, was a complete, valid, and binding contract between the said city of New Orleans and your petitioner, by means of which the said city of New Orleans agreed and promised to sell and convey and deliver to your petitioner the said square of ground, the property of the city of New Orleans, marked "27 A," on the surveys of the city as aforesaid, on the said terms and conditions; and that all the right, title, and interest of the said city of New Orleans in and to the said square of ground were then, and are now, vested in your petitioner, dependent only upon the con-

dition that the said injunction shall be dissolved or set aside, and upon no other.

And your petitioner further represents that the attorney-general of the State of Louisiana, assuming to act for the State, on or about the 17th of July, 1869, filed a petition entitled a "petition and information," in the said above-entitled suit in aid of the said New Orleans, Mobile and Chattanooga Railroad Company, applied for and obtained an injunction prohibiting the said city of New Orleans from executing the said proposed sale of the said square 27 A to petitioner, as will be seen by reference to the said petition and information now on file in the said above-entitled suit.

And your petitioner further represents that the said rights acquired as aforesaid by him as the owner and possessor of the said railroad, and of the said franchises to maintain, run, and operate the said railroad for the transportation of freight and passengers, and to locate, construct, maintain, and operate a ferry or ferries from the depot property appertaining to the said railroad, on the right bank of the Mississippi River, to one or more points within the corporate limits of the said city of New Orleans, and to the right of landing for the said ferry or ferries at the said depot property on the right bank of the Mississippi River, and at one or more points within the corporate limits of the said city of New Orleans on the left bank of the Mississippi River, and of using the spaces allowed by the said city for the use of the said railroad, result from and are vested in your petitioner under and in virtue of the act entitled "An act to incorporate the New Orleans, Opelousas and Great Western Railroad Company," approved April 22d, 1853, and of the act entitled "An act supplementary to an act to incorporate
539 the New Orleans, Opelousas and Great Western Railroad Company," approved April 30, 1853; to which said acts reference is prayed, and to the ordinances of the said city of New Orleans No. 2890 or 2290, approved July 10th, 1855, and No. 799, new series, approved December 16, 1867, and No. 1492, approved on the 15th of July, 1869, copies of which are herewith filed, marked "E" and "F;" which said acts constituted a contract between the said New Orleans, Opelousas and Great Western Railroad Company and the State of Louisiana, and which said ordinances No. 2890 or 2290 and 799 constituted a contract between the said city of New Orleans and the said New Orleans, Opelousas and Great Western Railroad Company and your petitioner, as the successor of the said company, entered into and made under the authority of the said acts of the legislature, all of which said rights are protected by section ten of the first article of the Constitution of the United States, which prohibits any State from passing any law impairing the obligation of contracts, and cannot be affected or in any way impaired by any subsequent legislation of the legislature of Louisiana or of the city of New Orleans.

And your petitioner further represents that the said portion of ground marked "27 A" on the surveys of the city of New Orleans, as aforesaid, was the private property of the said city of New Orleans, and makes part of a larger portion of ground formerly known as the batture, and lying between Delta street, as now represented in the maps of the city, and the Mississippi River, the title to which was vested in the city of New Orleans in full and absolute ownership under and by virtue of the cession and relinquishment by the former owners thereof, made in favor of municipality No. two, before Hilary B. Cenas, a notary public in the said city of New Orleans, on the 30th day of June, 1851, an authentic copy of which act is herewith filed, marked G; that the right

of the said city of New Orleans in and to the said property, and every part of the same, under the said public act, was protected by the tenth section of the first article of the Constitution of the United States, and that the said city of New Orleans was in law entitled to sell or otherwise alienate and dispose of the same in the same manner, and so as to transfer all the right, title, and interest therein to any third person, as fully and completely as any individual or private owner of property whatsoever.

And your petitioner further represents that the said New Orleans, Mobile and Chattanooga Railroad Company, on the night of the 17th of July, 1869, entered upon and took forcible possession of the said portion of ground marked "27 A" on the surveys of the city as aforesaid, and are now in the actual possession of the same.

And your petitioner further represents that the said New Orleans, Mobile and Chattanooga Railroad Company pretend to have a right to occupy and make use of the said portion of ground marked "27 A," under grants made to the said company by the legislature of the State of Louisiana in the acts referred to and described in the petition filed in the said suit as aforesaid, and that the said pretension of the said company is asserted and maintained by the attorney-general of the State of Louisiana, assuming to act for the State and in aid of the said company, under and in furtherance of the said grants made by the State of Louisiana in the said acts.

And your petitioner now avers that the State of Louisiana had no right, title, or interest as owner in and to the said portion of ground represented and known as "27 A" in the surveys of the said city of New Orleans, or to any part thereof; that the legislature of the State of Louisiana had no right or power to pass any law impairing the
540 obligation of contracts, or to pass any law to divert any rights vested in the owners of property in any other way than to authorize property being taken for purposes of public utility and for adequate compensation, by the exercise of the right of eminent domain, by proceedings provided for and had in due course of law; that the said grants made to the said New Orleans, Mobile and Chattanooga Railroad Company by the State of Louisiana in the said acts of the legislature of the said State were and are absolutely null and void, and neither vested or could vest in the said New Orleans, Mobile and Chattanooga Railroad Company any right, title, or interest in or to the said square "27 A," or to the use of the same or any part thereof, because of the want of any right, title, or interest in the State of Louisiana as owner of the said square "27 A," or any part thereof, or of the right to the use of the same; and because the said acts containing the said grants were made and passed in violation of section ten of the first article of the Constitution of the United States; and because they were made and passed in violation of article 110 of the constitution of the State of Louisiana, adopted in the year 1868, and prior to the passage of the said acts, which declares that "no retractive law or law impairing the obligation of contracts shall be passed, nor vested rights be diverted, unless for purposes of public utility and for adequate compensation."

And your petitioner further represents, that neither the said New Orleans, Mobile and Chattanooga Railroad Company, or the State of Louisiana, through the attorney-general, who assumes to act for the same, had any right to interfere and intermeddle with the said transactions between petitioner and the said city of New Orleans, and to apply for and obtain the injunction issued, as aforesaid, in the said

above-entitled suit; that the said injunctions were improvidently granted; that they are injurious to your petitioner, and that the same ought to be dissolved and set aside.

Wherefore your petitioner prays that he may have leave to intervene in the above-entitled suit. And he further prays that the said New Orleans, Mobile and Chattanooga Railroad Company, and the attorney-general of the State of Louisiana, assuming to act for the State, may be served with copies of this petition, in order that they may answer the same in the legal delay; and that after legal proceedings had, the said injunction granted in the said case may be dissolved and set aside.

MILES TAYLOR,
Attorney.

Order.

Let the petitioner intervene as prayed for, and let the within petition in intervention be filed and proceeded in according to law.

(Signed) CHAS. M. EMERSON,
Judge Third District Court,
acting in absence of
Hon. H. C. Dibble, Judge Eighth District Court,
for the Parish of Orleans.

NOTE.—Record in suit Chas. Morgan vs. New Orleans, Opelousas and Great Western Railroad Company, No. 5788 docket United States circuit court, referred to in the foregoing petition. (See conclusion of this record.)

541 *Document A C.—Letter from Charles Morgan to city council, asking ferry privileges, and proposing to purchase square 27 A.— Filed July* 30, 1870.

To the honorable the mayor and members of the common council of the city of New Orleans:

GENTLEMEN: Since I have become the owner, by purchase on the 25th of May last, of the railroad extending from Algiers (opposite the city of New Orleans) to Berwick's Bay, and of the rights and privileges appertaining to it, my attention has been directed to the subject of providing the means for the proper transportation across the Mississippi River of the freight and passengers from the city of New Orleans to be carried over the railroad, and coming by the railroad to the city of New Orleans.

At this time all the arrangements for that purpose are of the most simple and primitive description, are behind the age, and are entirely inadequate to effect the object aimed at in a manner convenient and advantageous to the business and traveling public or to myself.

Now freight requires to be handled several times before it is placed on the cars in which it is to be carried over the road, or before it is delivered in New Orleans, after having been brought over the road. This, as is well known to all business men, is a great disadvantage to freight, because every additional handling increases the danger of injury to the packages in which a very large proportion of merchandise is contained; and it is also a great disadvantage to the business public, for every unnecessary handling of freight subjects it to an addi-

tional expense, because every such handling requires the expenditure of a certain amount of human labor, which must be paid for.

The importance and expensive character of all the separate and distinct circumstances connected with the transportation of freight across such a stream as the Mississippi River, in the present condition of things, will be at once apparent when you are informed that the cost to the railroad of such transportation, when it receives freight at the wharf in New Orleans to be carried over the road to Berwick's Bay, amounts, for carrying it over the river, to fifteen per cent. on the total charge for carrying it from the city where it is received to Berwick's Bay.

To get rid of these disadvantages, and to "insure the safe, certain, and cheap transportation of freight, passengers and merchandise," contemplated by the legislature of Louisiana, when the work of building this road was entered upon, will require extensive and systematic preparations for carrying on the business of transporting freight and passengers over the river, and will necessarily involve the expenditure of large sums of money.

With such preparations as can be made with the aid of the mechanical appliances of the day, the freight to go over the road from New Orleans can be received and placed in the cars in which it is to be transported on this side of the river, and not be again disturbed until it reaches its destination; and the cars with freight for the city can be brought over the river, so that bulk will not be broken until the freight is in the city, ready for delivery; but is impossible that any one should make the expenditure of money necessary to accomplish such results unless—

First. He has possession and control of such portions of the banks of the river, and of the land adjacent thereto, as are required for the erection of the warehouses and other buildings necessary for the
542 accommodation of the freight to be carried, and of the cars to be employed in carrying it and for the landing of the boats engaged in the business of carrying freight and passengers, or passengers alone, across the river; and,

Second. He is assured of the possession and control of such portions of the banks of the river, and of the land adjacent thereto, as may have been set apart for these purposes, so long as the railroad continues to exist and is kept in operation, and this possession and control may be necessary or convenient for the successful promotion of the business of the road.

As the owner of the railroad in question, I am desirous of having the improvements referred to made with respect to the transportation of freight, etc., across the Mississippi River, and the object of this communication is to say to the honorable the mayor and common council of the city of New Orleans that I am ready, in a reasonable period of time, to make these at my own expense if the city of New Orleans will sell to me, at a fair price, the square of ground marked 27 A on the survey of the city, bounded by Notre Dame, Girod, and Water streets, and the projected line of Pilié street and the riparian rights attached to it, and will grant me such rights and privileges with respect to the possession and control, for the purposes indicated, of the portion of the river front of the city of New Orleans beginning at a point one hundred and thirty-five feet below the lower line of Girod street, and extending to a point one hundred and thirty-five feet above the upper line of Notre Dame street, and running back between lines parallel with Girod and Notre Dame streets, the upper portion of the same to Pilié street and the lower portion to Water street.

I am now the owner, by purchase, of the two squares bounded respectively as follows: one by Front, Delta, Notre Dame, and Girod streets, and the other by Delta, Water, Girod and Notre Dame streets. But the space afforded by these squares is not sufficient for the erection of the depots and other buildings required for the accommodation of freight, and of the cars and the railroad tracks to be employed and used in its transportation, and for other purposes connected with the successful carrying on of the business.

If the city will sell me the square just mentioned, which is contiguous to the two squares owned by me, at a price to be agreed on, and will grant and cede to me the exclusive right of landing for the ferry or ferries from the depot property of the railroad belonging to me in Algiers and Gretna, on the right bank of the river, on the river front of the city, beginning at a point one hundred and thirty-five feet below the lower line of Girod street, to a point one hundred and thirty-five feet above the upper line of Notre Dame street, and will set apart the river front between these two points, and extending back, as before mentioned, to Pilié and Water streets respectively, agreeably to the provisions of the act of the legislature of the State of Louisiana entitled "An act supplementary to an act to incorporate the New Orleans, Opelousas, and Great Western Railroad Company," approved April 30, 1853, and to give effect to that act, with full power and authority to enclose and occupy the space so set apart for my exclusive use in carrying on the business of the railroad, in the same manner and with the same privileges as is or are now granted to the New Orleans, Mobile, and Chattanooga Railroad Company by the joint resolution of the legislature approved on the sixth of March, 1869, I will at once enter upon the work of making the proposed improvements, so as to carry out the intent and design of the legislature in the passage of that
543 act, and thus insure the safe, certain, and cheap transit of freight, passengers, and merchandise across the Mississippi River, which was aimed at by the legislature when the act was passed.

The depot of the Pontchartrain Railroad, which is a great instrument in carrying on the trade of New Orleans with Mobile and Alabama, is already located there. The New Orleans, Jackson, and Great Northern Railroad, which carries on the trade between New Orleans and Mississippi, is already making preparations, under the authority of an ordinance of the city council, to build a depot for the carrying on the business of that road at the corner of Front and Girod streets. The depots of the New Orleans, Mobile, and Chattanooga Railroad, which railroad is in course of construction, are to be placed there, under the provisions of the act passed at the recent session of our legislature.

Under these circumstances it seems to me in the highest degree desirable that what I now ask should be done in the public interest, as the arrangements which I propose to make will facilitate the making of the closest connections with the different railroads centreing or to centre there, and will materially contribute to the rendering of many of the great operations of trade more expeditious and much less expensive than they now are. But in addition to this, there is another consideration which should constrain the council to act in the manner proposed.

It is difficult to carry on the trade between the city of New Orleans and the western part of Louisiana and Texas, now going over the road, in a way to give satisfaction to the public and to business men because of the insufficient means under my control.

What will be the situation of that trade when it doubles and trebles and quadruples its present amount, as it will most certainly do in a very few years, under the influence of the extension of the road westward? It is clear to my mind that what is now difficult and unsatisfactory, will then be found altogether impracticable, unless what I now propose to do shall have been done.

It is only necessary for me to add that if the city sells to me the square referred to, and the rights and privileges asked for are granted and ceded to me to use under the provisions of the act of April 30, 1853, I shall be ready to relinquish all the advantages which result from the passage of ordinances No. 2890 or 2290, and No. 799, new series, or any other in relation to the exercise or enjoyment of any rights to other portions of the river front of the city for ferry landings for the use of the New Orleans, Opelousas and Great Western Railroad Company.

(Signed) CHAS. MORGAN,
per CHAS. A. WHITNEY & CO., *Agents.*

NEW ORLEANS, *June* 29, 1869.

Document A D—Ordinance No. 1492, *new series.—Filed July* 30, 1870.

Whereas the legislature of Louisiana, by acts approved April 30, 1853, and March 15, 1855, enacted that the New Orleans, Opelousas and Great Western Railroad Company should be and were thereby "authorized and empowered to locate, construct, maintain, and operate a ferry or ferries from their depot property on the right bank of the Mississippi River to one or more points within the corporate limits
544 of the city of New Orleans, and that the parish of Orleans, right bank of the Mississippi River, and the city of New Orleans should grant, cede, and donate to said company, within their respective jurisdictions, the right of landing for said ferry or ferries at company's depot property, on the right bank of the Mississippi River, and at one or more points within the corporate limits of the said city;"

And whereas, the contemplated grand division of the railroad of the said company between Algiers (opposite the city of New Orleans) and Berwick's Bay, then in full operation, and constructed by the said company in pursuance of their charter, together with the road-beds of the main track and branches, and also all the depots and lands especially appertaining to them, and all the buildings, wharves, and all the equipments and franchises belonging and appertaining to the said division of the said road, where mortgaged, by authority of law, to secure the payment of a large sum of money and of the interest to accrue thereon, by public act of mortgage passed before Selim Magner, notary public, in and for the city of New Orleans and parish of Orleans, on the first day of April, 1859;

And whereas, default having been made in the payment of the interest of the said sum of money, the said railroad, together with the road-beds of the main track and branches and all the depots and lands specially appertaining to them, and all the buildings, wharves, and all the equipments and franchises belonging and appertaining to the said division of the said railroad, were seized and sold at public sale, according to law, to satisfy the said mortgage debt;

And whereas, Charles Morgan, at the said public sale, became the purchaser of the said grand division of the said railroad, constructed by the said company and mortgaged as aforesaid, together with all the depots and lands, all the buildings and wharves, and all the franchises

belonging and appertaining thereto, and is now the legal owner and possessor of the same;

And whereas, the said grant made by the legislature of the State of Louisiana, as aforesaid, to the said New Orleans, Opelousas and Great Western Railroad Company, of the authority and power to locate, construct, maintain, and operate a ferry or ferries from their depot property on the right bank of the Mississippi River to one or more points within the corporate limits of the city of New Orleans, was made with the intent and design to insure the safe, certain, and cheap transit of freight, passengers, and merchandise across the Mississippi River, from the city of New Orleans to the depot property of the said company on the right bank of the Mississippi River, and from the depot property of the said company on the right bank of the Mississippi River to the city of New Orleans;

And whereas, the said intent and design of the legislature has not been realized in consequence, in part, of the failure of the city of New Orleans and of the parish of Orleans, right bank of the Mississippi River, to make such grants, cessions, etc., with reference to the right of landing for said ferry or ferries, and to the spaces allowed for landing for the use of said railroad, and in part to the inability of the said company to provide the necessary means for the "safe, certain, and cheap transit of freight, passengers and merchandise," which grew out of the disturbed condition of the country resulting from the late unhappy war;

And whereas, the said Charles Morgan, in his capacity as owner of the said railroad, together with all the depots and lands, all the buildings and wharves, and all the rights and franchises belonging and appertaining to the said road, is now desirous of locating and establishing ferries between the depot property belonging to him and appertaining to the said railroad on the right bank of the Mississippi River, at the town of Algiers and the town of Gretna and the city of New Orleans, at or near the point where Girod street, in the first district, comes to the river, and of maintaining and operating the same so as to subject the freight and passengers from the city of New Orleans to be carried over the said railroad, and the freight and passengers coming by the said railroad to the city of New Orleans to the least possible delay and detention, and as will enable him to carry such freight and passengers across the Mississippi in a manner most convenient and advantageous to the public and the most economical to himself;

Therefore, in order to carry out and give effect to the provisions contained in the said acts of the legislature, entitled "An act supplementary to an act to incorporate the New Orleans, Opelousas and Great Western Railroad Company," approved April 30, 1853, and "An act to repeal the proviso of the second section of an act entitled 'An act supplementary to an act to incorporate the New Orleans, Opelousas and Great Western Railroad Company,'" approved March 13, 1855:

Be it ordained by the common council of the city of New Orleans, That the city of New Orleans will sell, and hereby agrees to sell and to convey and deliver, to Charles Morgan, his heirs and assigns, all that portion of ground lying and being in the first district of the city of New Orleans, between Water street and the Mississippi River, and bounded above by a line, being the prolongation of the lower line of Notre Dame street, and below by a line, being the prolongation of the upper line of Girod street, as the said Notre Dame and Girod streets respectively now exist and extend from the said Water street to the

Mississippi River, together with all the riparian rights and privileges in anywise belonging or appertaining to the same, for and in consideration of the price and sum of fifty-four thousand dollars ($54,000), to be paid to the city by the said Charles Morgan at the time of the execution of the act to be prepared to carry out this ordinance; provided, and it being well understood in making the said sale, that if at any time it becomes expedient or necessary, in the opinion of the common council of the city of New Orleans, to lay out and extend one or more streets through the said portion of ground parallel with Water street aforesaid, that then and in that case the said Charles Morgan shall not be entitled to claim or receive any compensation for the land which may be taken for such street or streets; provided, that any such street or streets shall not exceed sixty feet in width, and that no square which shall be formed between the said Notre Dame and Girod streets shall have a front of less than three hundred feet on the said Notre Dame and Girod streets respectively.

2d. Be it further ordained, etc., That for the reasons set forth in the preamble to this ordinance, the city of New Orleans grants and cedes to the said Charles Morgan, in his capacity of owner and proprietor of said railroad, his heirs and assigns, for the purpose of establishing, locating, constructing, maintaining and operating a ferry or ferries between the depot property of the said railroad at Algiers and Gretna belonging to him, on the right bank of the Mississippi River, and the city of New Orleans, the exclusive right of landing on that portion of the river front of the city constituting the port of the city of New Orleans, beginning at a point one hundred and thirty-five (135) feet below the lower line of Girod street, and extending up the river to a point one hundred and thirty-five feet above the upper line of Notre Dame street, and to the exclusive use, in the same manner and with the same rights and privileges as are now granted to the New Orleans, Mo-
546 bile and Chattanooga Railroad Company by the joint resolution of the legislature approved sixth of March, 1869, of the space on the said river front, including the landing between the said points of the batture, wharves, levee, and all the other space extending from the said front on the said river, and running back between lines drawn from the said points and parallel with Girod and Notre Dame streets, the lower portion of the same to Water street and the upper portion to Pilié street, for the erection of depots and other buildings required for the accommodation of freight and of the cars and railroad trains to be used and employed in its transportation and making connections with the different railroads terminating in the neighborhood of Girod street, and for any and all other purposes connected with the carrying on of the business of the said ferries for the transportation of freight and passengers across the Mississippi River; provided—

1st. That the said Charles Morgan, his heirs or assigns, shall locate, establish, construct, maintain, and operate a ferry or ferries to run and ply between the depot property belonging to him, on the right bank of the Mississippi River, at Algiers or Gretna, and the said space on the river front of the city of New Orleans, the use of which is granted and ceded to him, as aforesaid, with the means and appliances for carrying passengers, freight, and loaded or unloaded railroad cars across the Mississippi River; and provided—

2d. That the said Charles Morgan shall renounce and yield and give up to the city of New Orleans all the rights and privileges to which he is now entitled as the purchaser of the said railroad, under the ordinances

Nos. 2290 and 2890, or under ordinance No. 791, new series, or under any other ordinance of the city of New Orleans; provided—

3d. That the portion of the landing herein granted for the purpose of running and operating the trains, as aforesaid, be restricted to that purpose exclusively; and that no other steamers or vessels of any kind whatever shall be permitted to land at said landing; and that in no manner shall the privileges herein granted be used to the prejudice of the city's right to collect dues or wharfage from other steamers, should Charles Morgan permit other steamers to land at said portion of the landing.

3d. Be it further ordained, etc., that for the purpose of facilitating the said Charles Morgan in carrying on the business of the said railroad, the city of New Orleans grants and cedes to the said Charles Morgan, his heirs and assigns, the right to construct and lay down within the space described in the foregoing section of this ordinance all the tracks and transfer tracks, turnouts and switches, and to erect and build all the depots, warehouses, and other buildings required for the convenient prosecution of the business of the said railroads and the carrying on of the said ferry or ferries, and to lay tracks, transfer tracks, turnouts and switches along, upon, or across the streets which may now or hereafter run through the said space described as aforesaid, or be contiguous to the same, or to the portion of ground sold to the said Charles Morgan as described and set forth in the first section of this ordinance; or to the other two squares of ground, the property of the said Charles Morgan, bounded as follows: one by Front, Delta, Notre Dame, and Girod streets, and the other by Delta, Water, Girod, and Notre Dame streets, or of any other squares of ground in the same neighborhood which may be necessary for forming a junction or connection with the New Orleans, Jackson and Great Northern Railroad, or with the Pontchartrain Railroad, or with the New Orleans, Mobile and Chattanooga Railroad.

4th. Be it further ordained, etc., that the said Charles Morgan shall be required to bind himself, his heirs or assigns, at his or their
547 own expense: 1st, to maintain the wharf or wharves for landing on the river front on the said space, the exclusive right to the use of which is granted and ceded to him, his heirs and assigns, as aforesaid, in the second section of this ordinance, in perfect good order and condition. 2d, to conform to the grades and levels to be established by the city surveyor of New Orleans in the construction of the said railroad tracks, turnouts, switches, etc.; and 3d, to do whatever is necessary to prevent the laying or the existence of such railroad tracks, turnouts, switches, etc., or other works of any description, from disturbing or impairing the drainage and flow of water, or from unnecessarily impeding the passage of vehicles or passengers through the said streets, or impairing the usefulness of the same.

5th. Be it further ordained, etc., that the city surveyor be and he is hereby directed to prepare plans or drawings representing the said portion of ground sold, as aforesaid, to the said Charles Morgan, and the said space on the river front of the city, the use of which is granted and ceded to the said Charles Morgan, his heirs and assigns as aforesaid, to be annexed to the notarial act to be executed to carry out and give effect to this ordinance.

6th. Be it further ordained, etc., that the mayor be and he is hereby authorized and empowered to enter into a contract with the said Charles Morgan, agreeably to and in accordance with the provisions of this ordinance.

7. Be it further ordained, etc., that the mayor shall not enter into and execute the contract provided for in the 6th section, nor shall any action of the common council upon the ordinance be considered binding or of any effect until the injunction granted on the 5th day of July, 1869, by the fifth district court of the parish of Orleans in the case entitled "The New Orleans, Mobile and Chattanooga Railroad Company vs. The City of New Orleans, No. 738 of the docket of the said court, shall have been dissolved or set aside according to law; provided, however, and it being now expressly declared that upon the dissolution of the said injunction, or upon its being set aside according to law, then, and in either event, the said ordinance shall be binding and operative from the date of its passage, it being the intent and design of the common council to suspend the binding force and effect of the said ordinance only until the said injunction is dissolved or set aside according to law, and upon no other contingency or condition whatever.

8. Be it further ordained, etc., that all ordinances or parts of ordinances in conflict with this ordinance be and the same are hereby repealed.

(Signed) G. PANDELY,
President Board Assistant Aldermen.

(Signed) LOUIS A. WILTZ,
President Board of Aldermen.

Approved July 15, 1869.

(Signed) JOHN R. CONWAY, *Mayor.*

A true copy:
JNO. W. OVERALL, *Secretary.*

I hereby certify that the foregoing ordinance, No. 1492, new series, is a correct copy of the ordinance numbered 1492, new series, recorded in the book of ordinances, in the mayor's office.

H. CONQUEST CLARKE,
Secretary.

MAYORALTY OF NEW ORLEANS, *City Hall, July* 16, 1870.

548 *Document A. E.—Ordinance No.* 2290.—*Filed July* 30, 1870.

No. 2290.

An ordinance leasing to the New Orleans, Opelousas and Great Western Railroad Company a portion of the port and levee in front of the city of New Orleans, to be used as a depot for passengers and freight.

ARTICLE 1. Be it ordained that all that portion of the port of New Orleans extending from the beef market at the foot of St. Ann street, in the second district, fronting on the Mississippi River, to the wharf of the New York mail steamers, the same being one hundred and fifty feet on the line of the river and extending back in straight lines to Levee street, be and the same is hereby leased to the New Orleans, Opelousas and Great Western Railroad Company as a ferry landing and depot for passengers and freight; said lease to commence from the approval of this ordinance.

ART. 2. This lease shall be for the term of twenty-five years from the passage of this ordinance.

ART. 3. Said company shall have the right to erect or cause to be erected, on the ground set apart for their use, fire-proof buildings for

the accommodation of passengers and freight according to plans, drawings, and specifications to be approved by the city surveyor and common council, provided said company shall not be allowed to use or to lease the lands to be used for any other purposes than those above mentioned in this article.

ART. 4. The said company shall build or cause to be built, and keep constantly in the best repair, a suitable wharf, according to a plan and specifications to be approved by the city surveyor and common council.

ART. 5. The consideration of this lease is, that said wharf and the buildings thereon shall revert to the city of New Orleans at the expiration of this lease, unless it be extended by the common council of New Orleans.

ART. 6. The landing, wharf, and depot of said company shall be provided with a sufficient number of gas-lights, to be approved by the city surveyor and paid for by said company, and kept constantly lighted at night at their own expense.

ART. 7. Said company shall be bound to run, or cause to be run, during the hours hereinafter named, a good and substantial steamboat or steamboats of proper dimensions, to pass inspection and be approved by the United States officers appointed for said purposes, in accordance with the laws of the United States. Said company shall be bound to run, or cause to be run, said boat or boats regularly as follows, to wit: From four o'clock a. m. to six o'clock a. m., every thirty minutes; from six o'clock a. m. to six o'clock p. m., every twenty minutes; and from six o'clock p. m. to eleven o'clock p. m., every thirty minutes.

The maximum rates to be as follows:

For every passenger, five cents.

For every horse, mule or horned cattle, ten cents.

For every horse and gig, or buggy, or wagon, twenty-five cents.

For every horse and cart or dray, twenty-five cents.

549 For every four-wheeled carriage with two horses, fifty cents.

(Signed) J. J. LUGENBUHL,
President Board of Aldermen.

(Signed) E. L. TRACY,
President Board of Assistant Aldermen.

Approved July 10, 1855.

(Signed) JOHN L. LEWIS, *Mayor.*

A true copy.

MAYORALTY OF NEW ORLEANS,
City Hall, July 25, 1870.

I certify that the foregoing ordinance, No. 2290, is a true copy from the book of Ordinances in the mayor's office.

(Signed) E. L. BOWER,
Chief Clerk.

Document A F.—Ordinance No. 799.—*Filed July* 30, 1870.—*No.* 799.—*New series.*

Whereas by an act of the legislature approved April 30, 1853, the city of New Orleans was required to grant to the New Orleans, Opelousas and Great Western Railroad Company one or more landings within the corporate limits of the city for the accommodation of the said company for ferries; and

Whereas by an act passed before T. E. Théard, notary public, in the

month of July, 1855, the city granted to the N. O., O. and G. W. R. R. Co. a ferry landing for twenty-five years, one hundred and fifty feet front on the Mississippi River, at the foot of St. Ann street, in the second district, conditional that a ferry-boat should make trips every twenty minutes to a point on the opposite side of the river; and

Whereas the city of New Orleans, in April, 1858, set apart for the use of said company one hundred and fifty feet river front, between Toulouse and Jefferson streets, for freight and ferry purposes, which was used by said company for that purpose until the road was taken for war purposes in 1862; and

Whereas, that on the restoration of the road by the military authorities to the company in February, 1866, a space occupied near Canal street was turned over to the company, the city authorities notified the company to vacate the landing used by the military authority near Canal street. In the meantime the space set apart by the city in April, 1858, between Toulouse and Jefferson streets, was improved by the city building a continuous line of steamship wharves, rendering the place unfit for ferry and freight for said company; consequently the road has been restricted to the privilege held under the grant of 1855 at St. Ann street; and

Whereas, since direct communication has been opened between New Orleans and Galveston by the N. O., and G. W. R. R. Co. to Brashear City, passengers and freight taking the Morgan line of steamships, adapted expressly for the trade, making four regular trips a week, with this increased business of travel and freight on said road, the space set apart at St. Ann street is far inadequate for the business of said road; and as the city of New Orleans has a large interest in said road, to the extent of nearly one million and a half of dollars, the
550 commercial interest of the city and the interest of the road require that a sufficient space should be provided by the city for said company for the safe and convenient transaction of its business; therefore be it

Resolved, That one hundred and twenty-five feet on the Mississippi River, commencing on the lower side of the ferry landing at St. Ann street, extending down with the landing, be and the same is hereby set apart and appropriated for the use of the New Orleans, Opelousas and Great Western Railroad Company for freight and ferry purposes; the said company to make and construct all improvements and keep the same in repair at their own expense.

Resolved further, That all privileges, ordinances, or parts of ordinances in conflict with the same be and the same are hereby repealed.

(Signed) F. W. PERKINS,
President pro tem. Board of Assistant Aldermen.

(Signed) JAMES GRAHAM,
President Board of Aldermen.

Approved December 16, 1867.

(Signed) E. HEATH, *Mayor.*

MAYORALTY OF NEW ORLEANS,
City Hall, July 25, 1870.

I certify the foregoing ordinance, No. 799, new series, is a true copy from the book of Ordinances in the mayor's office.

(Signed) E. L. BOWER,
Chief Clerk.

Document A H.—Acceptance by Chas. Morgan of ordinance No. 1492.—Filed July 30, 1870.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that on this seventeenth day of July, eighteen hundred and sixty-nine, before me, Selim Magner, a notary public, duly commissioned and sworn, in and for the parish of Orleans, personally came and appeared Mr. Charles A. Whitney, of this city, the agent and attorney in fact of Mr. Charles Morgan, of New York, who declared that whereas by ordinance No. 1492, new series, of the common council of the city of New Orleans, approved by his honor the mayor on the fifteenth of July current, duly published in the official journal of this city, the Commercial Bulletin, the city of New Orleans agreed to sell unto said Charles Morgan certain land in front of this city for a stipulated price, and under all the clauses and conditions contained in said ordinance, a published copy of which is taken from said official journal and is hereto annexed as part hereof; and whereas said Whitney, for and in the name of said Charles Morgan, is desirous of accepting said ordinance, and to cause his said constituent to comply with all and singular the clauses and conditions therein contained:

Now, therefore, he, said Whitney, does hereby, in his aforesaid capacity, and in the name of said Charles Morgan, accept the said ordinance in all its contents and details, and does hereby bind his said con-
551 stituent to comply faithfully and truly with all and singular the conditions, clauses, and stipulations therein contained.

Thus done and passed in my office, at New Orleans aforesaid, on the day, month, and year above written, in the presence of James Fahey and Martin S. Ainsworth, witnesses, who sign these presents with said appearer and me, notary, after reading thereof.

(Original signed) CHARLES A. WHITNEY.
JAS. FAHEY.
M. S. AINSWORTH.
S. MAGNER.
Not. Pub.

A true copy:
New Orleans, July 16, 1870.
[SEAL.] (Signed) S. MAGNER,
Not. Pub.

Document A I.—Letter accompanying acceptance A. H.—Filed July 30, 1870.

NEW ORLEANS, *July* 20, 1869.

HON. J. R. CONWAY,
Mayor of the City of New Orleans:

SIR: We have the honor to transmit herewith an authentic copy of notarial act before Selim Magner, notary public for the city and parish of Orleans, on the seventeenth day of July, 1869, whereby our Mr. Charles A. Whitney has accepted, on behalf of Mr. Charles Morgan, all the terms and conditions contained in ordinance No. 1492, new series.

Begging the acknowledgment of the receipt of this communication, we have the honor to subscribe ourselves,

Your most obedient servants,
(Signed) CHARLES A. WHITNEY & CO.,
Agents.

Citations to petition of intervention of Charles Morgan.—Issued July 30, 1870.

State of Louisiana, eighth district court for the parish of Orleans, in the city of New Orleans.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS. } No. 4. Citation.

To the City of New Orleans, through B. F. Flanders, mayor; State of Louisiana, through S. Belden, attorney-general; New Orleans, Mobile and Chattanooga Railroad Company, through its president—greeting:

You are hereby summoned to comply with the demand contained in the petition in intervention, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the
552 eighth district court for the parish of Orleans, in ten days after the service hereof.

Witness the honorable C. M. Emerson, judge of the third district court for the parish of Orleans, acting in the absence of the honorable Henry C. Dibble, judge of the said court, the thirtieth day of July, in the year of our Lord 1870.

[SEAL.] (Signed) J. D. TAYLOR,
Deputy Clerk.

Sheriff's return on citation to City of New Orleans.—Filed Aug. 5, 1870.

Received August 3, 1870, and on the same day, month, and year served copy of the within citation and accompanying petition of intervention on the City of New Orleans, defendant herein, through the honorable B. F. Flanders, mayor of said city.

Returned same day.

(Signed) PH. LACOSTE,
D'y Sheriff.

Sheriff's return on citation to N. O., M. and C. R. R. Co.—Filed August 9, 1870.

Received August 5, 1870, and on the eighth day of the same month and year served copy of the within citation and accompanying petition of intervention on the New Orleans, Mobile and Chattanooga Railroad Company, plaintiff herein, through W. S. Williams, its treasurer, in person.

Returned same day.

(Signed) PH. LACOSTE,
D'y Sheriff.

Sheriff's return on citation to State of Louisiana.—Filed Aug. 13, 1870.

Received August 5, 1870, and on the eighth day of August, 1870, served copy of the within citation and accompanying petition of intervention on the State of Louisiana, by a personal service on Henry C. Warmoth, governor; S. Belden, attorney-general, being absent from the State at the time of service.

Returned August 12, 1870.

(Signed) J. W. F. LEECH,
D'y Sheriff.

Answer of City of New Orleans to intervention of Charles Morgan.—Filed August 6, 1870.

State of Louisiana, parish of Orleans.

Eighth district court.

THE N. O., M. & C. R. R. Co. *vs.* THE CITY OF NEW ORLEANS. } No. 4.

And now before the court comes the City of New Orleans, and for answer to the petition of intervention filed herein by Charles Morgan, and by way of reconventional demand in favor of said City of New Orleans and against said Charles Morgan, this appearer shows:

553 That on or about the 20th day of September, A. D. 1820, a certain act was entered into by and between Edward Livingston, together with other riparian proprietors and certain citizens of New Orleans, wherein and whereby the batture or levee, being in suburb St. Marie, and the accretions thereafter to become attached to the same, were dedicated to public use, and the purposes of business and commerce, and upon the express understanding and condition that the same should thereafter remain and continue a locus publicus out of commerce, and not be affected by any adverse claim or grant which might be set up against the same.

That for many years anterior to the authentic act above referred to, and subsequent to the same, and prior to the passage of an act to incorporate the New Orleans, Opelousas and Great Western Railroad Company, approved April 22d, 1853, and an act entitled "An act supplementary to an act to incorporate the New Orleans, Opelousas and Great Western Railroad Company," approved April 30th, 1853, and prior to the adoption of city ordinances Nos. 2290, 799, new series, and 1492, new series, hereinafter referred to, certain riparian proprietors owning property in the faubourg St. Marie, aforesaid, many of whom were citizens of the United States, without any particular form or ceremony, converted the entire batture, forming the front of said city, and said suburb, into a locus publicus, and set apart the same for the use of the public, composed almost entirely of citizens of the United States, upon the condition imposed by law; that the batture thus informally dedicated should remain and continue to be solely appropriated to that purpose.

That the batture or levee thus dedicated to public use embraces the following property, grounds and real estate, to wit:

All that portion of the port of New Orleans from the beef market, at the foot of St. Ann street, in the second district, fronting on the Mississippi River, to the wharf of the New York mail steamers, the same being one hundred and fifty feet on the line of the river, and extending back in straight lines to Levee street.

Also, an additional one hundred and twenty-five feet on the Mississippi, commencing on the lower side of said ferry landing at St Ann street and extending down the river.

Also, the square of ground marked "27 A" on the surveys of the city, bounded by Notre Dame, Girod, and Walter streets, and the projected line of Pilié street, together with that portion of the river front of the city of New Orleans, beginning at a point one hundred and thirty-five feet below the lower line of Girod street, and extending one hundred

and thirty-five feet above the upper line of Notre Dame street, and running back between lines parallel with Girod and Notre Dame streets, the upper portion of the same to Pilié street, and the lower portion to Water street.

That the aforesaid batture, and particularly that portion thereof hereinabove particularly described, for more than thirty years prior to the passage of the aforesaid acts by the State of Louisiana, and the adoption of the aforesaid ordinances by the common council of the city of New Orleans, and up to and even after the time of such passage and adoption was used and enjoyed by the public, composed almost entirely of citizens of the United States, as a locus publicus, and in the interests of business and commerce; and that the same is now needed for public use, and to meet the exigencies and demands of the business and commercial relations of the city of New Orleans and the wants of the community at large.

And this appearer further shows that the intervenor, Charles Morgan, pretends that the aforesaid act of the legislature, approved 22d
554 day of April, 1853; the act supplementary thereto, approved April 30th, 1853; the ordinance of the city council of the city of New Orleans, No. 2290, approved July 10th, 1855; ordinance 799, new series, approved December 16th, 1867; and ordinance No. 1492, new series, approved 15th July, 1869, were contracts on the part of the State of Louisiana and the city of New Orleans, and had the effect of giving and granting unto the New Orleans, Opelousas and Great Western Railroad Company, and through said company to the said Charles Morgan, the right to the sole and exclusive use of all the grounds, property and real estate hereinabove set forth and fully described, with the privilege of enclosing the same, and by that means, and otherwise, to prevent the use and enjoyment of the said property, grounds and real estate, and every part thereof, by the public.

And this appearer further shows that the State of Louisiana had no right, title, interest or claim, as owner, to any portion of the property, grounds or real estate aforesaid, and had no right to pass any law divesting any of the rights of the owners of such property, or of the public, in any other way than to authorize property to be taken for purposes of public utility, and for adequate compensation, by the exercise of the right of eminent domain.

That if it be true that the several acts of the legislature of Louisiana, hereinabove referred to, did have the effect of bestowing upon the New Orleans, Opelousas and Great Western Railroad Company, or upon said Morgan, the right to enclose and solely to use and enjoy the land, property, and real estate aforesaid, and referred to in the aforesaid ordinances 2290, 799, and 1492, that then, and in that event, the said acts, and the grants and privileges therein bestowed, were made, passed and given in violation of section 10, article 1, of the Constitution of the United States; section 1, fourteenth amendment to the Constitution of the United States; section 20, article 6, constitution of Louisiana adopted in 1812; article 109, constitution of said State adopted in 1845; article 105, constitution of said State adopted in 1852; article 109, constitution of said State adopted in 1864, and article 110, constitution of said State adopted in 1868, and are therefore absolutely null and void.

This appearer further says that the aforesaid ordinances, 2290, 799, and 1492, give to intervenor possession of a locus publicus, the right to the use and enjoyment of which is in the public, composed almost entirely of citizens of the United States, and does thereby and therein

interfere with rights vested in private individuals, and in the public, the greater part of whom are citizens of the United States; and for this, and other reasons, the several ordinances aforesaid, and the grants and privileges therein pretended to be conferred, were made, passed, and given in violation of the aforementioned provisions of the Federal and State constitutions, particularly section 1, fourteenth amendment to the Constitution of the United States; section 10, article 1, of the Constitution of the United States; article 105, constitution of the State of Louisiana adopted in 1852; article 109, constitution of said State adopted in 1864, and article 110, constitution of said State adopted in 1868, and are, therefore, absolutely null and void, and of no force or effect.

And this appearer further shows that the corporate authorities of the city of New Orleans, before and at the time of the adoption and approval of the three several ordinances hereinabove particularly referred to, were without the power and authority to make the grants or concessions, or to confer the rights and privileges by such ordinances embraced; that the pretended transfer to the New Orleans, Opelousas and Great Western Railroad Company, and to the said Charles Morgan,
555 proposed in the several ordinances aforesaid, was made for a consideration grossly inadequate; that the value of the property, rights, and privileges, by said ordinances pretended to have been conveyed, is more than double the sum alleged to be given therefor, and, upon a fair public sale, the property would have commanded far more that the sum proposed, and the contract pretended to have been entered into, under the said ordinances, is impeachable for lesion; that, as a donation, the pretended contracts and agreements under the said ordinances were not warranted by law or public interests; that it appears upon the face of ordinance No. 1492 that the corporate authorities of the city of New Orleans were then disabled by a writ of injunction issuing from the fifth district court of the city of New Orleans from making a disposition of a portion of the said property, and that the ordinance hereinabove last mentioned was adopted during the pendency of a litigation relative thereto and while the title was in controversy; that the aforesaid ordinances, or one or more of the same, were precipitately carried through the common council of the city of New Orleans, when the right to office in such a body, on a part of a number of the members, was under contestation as intruders into the corporation, and as to whose right to office a judgment unfavorable to such members has been rendered by the fifth district court of the parish of Orleans; that the claim and demand of defendant to be protected in alleged rights under ordinances 2290 and 799 is a full, legal and equitable acknowledgment of no right or claim under 1492, depriving him of every privilege under that ordinance, without according him any right under ordinances 2290 and 799; and that by reason of the want of power or authority on the part of the aforesaid corporate authorities, the inadequacy of the pretended consideration, the want of legal requisites to constitute a valid donation, the disability arising from the pendency of judicial proceedings, and the judicial acknowledgment by the said Charles Morgan, the said ordinances, and each and every one of them, are invalid, and without legal or equitable force or effect.

And this appearer further shows that the said Charles Morgan, combining and confederating together with other persons, as yet unknown to this appearer, but whose names this appearer prays, when discovered, may be inserted herein as defendants and parties to this suit, with proper and sufficient words to charge them in the premises, with no

other authority than the aforesaid unconstitutional and invalid acts of the legislature of the State of Louisiana, and ordinances of the city of New Orleans, will take and keep, exclusive use and benefit, the property, grounds, real estate, batture and levee, hereinabove particularly described and set forth; that the said Charles Morgan will enclose the same, and will prevent the public, the residents and citizens of the city of New Orleans, from using and enjoying the same as a locus publicus, and for the purposes intended, at the time of the dedication thereof, as hereinabove is more particularly averred and set forth; and that this appearer, and the public, composed almost entirely of citizens of the United States, will suffer great and irreparable injury if said Chas. Morgan be not restrained from proceeding farther in violation of the just rights of this appearer, and of the public as aforesaid; and that this appearer is informed and believes that she is entitled in the premises to the remedial writ of injunction, to be issued out of this honorable court, to restrain the said Charles Morgan, his officers, agents, or employés from so proceeding.

Wherefore this appearer prays that upon this demand in inter-
556 vention judgment be rendered in favor of this appearer and against said Chas. Morgan.

She further prays that the said Chas. Morgan be cited to appear and answer this demand in reconvention, that in due course of law judgment may be rendered in favor of this appearer, and against said Morgan.

And that the said Charles Morgan may be restrained and enjoined from taking or keeping sole and exclusive possession of the following-described property, grounds, real estate, batture, and levee, to wit:

All that portion of the port of New Orleans from the beef market, at the foot of St. Ann street, in the second district, fronting on the Mississippi River, to the wharf of the New York mail steamers, the same being one hundred and fifty feet on the line of the river and extending back in straight lines to Levee street.

Also, an additional one hundred and twenty-five feet on the Mississippi, commencing on the lower side of said ferry landing at St. Ann street and extending down the river.

Also, the square of ground marked "27 A" on the surveys of the city, bounded by Notre Dame, Girod and Water streets, and the projected line of Pilié street.

Together with that portion of the river-front of the city of New Orleans, beginning at a point one hundred and thirty-five feet below the lower line of Girod street and extending one hundred and thirty-five feet above the upper line of Notre Dame street, and running back between lines parallel with Girod and Notre Dame streets, the upper portion of the same to Pilié street, and the lower portion to Water street, and every part or portion of the same, to the injury or detriment of the rights of this appearer, as hereinabove set forth; and from erecting upon or in any way or manner using or occupying the said portions of ground, or any part thereof, in violation of this appearer's rights, as hereinabove set forth, and from disturbing or interfering in any way or manner with appearer or the public in the free use and enjoyment thereof, and every portion of the same, as a locus publicus; and that said Chas. Morgan be enjoined and required to permit the said property, grounds, real estate, batture, and levee, and every part of the same, to remain free and open for public use, and for the exigencies and demands of the business and commercial relations of the city of New Orleans and the wants of the community at large, so that the free

and unrestricted use of said real estate, grounds, property, batture and levee, by the public, the exigencies and demands of business, the commercial interests of the city of New Orleans, and the wants of the community at large, shall not in any way or manner, directly or indirectly, be impaired, impeded, hindered or molested by said Charles Morgan, his agents or employés.

And this appearer further prays that she may have such other and further relief in the premises as the nature and circumstances of this case may require, and as to your honor may seem meet, right, and proper.

(Signed) GEO. S. LACEY,
City Attorney.

557 *Citation to answer and demand in reconvention of the City of New Orleans.—Issued August* 6, 1870.

State of Louisiana, eighth district court for the parish of Orleans.

N. O., M. AND C. R. R. Co. *vs.* THE CITY OF NEW ORLEANS. } No. 4.

To the New Orleans, Mobile and Chattanooga Railroad Company, through its proper officer:

You are hereby summoned to comply with the demand contained in the answer and demand in reconvention, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the eighth district court for the parish of Orleans, in ten days after service hereof.

Witness the Hon. Chas. M. Emerson, judge of the third district court for the parish of Orleans, acting in the absence of the Hon. H. C. Dibble, judge of the eighth district court, this 6th day of August, in the year of our Lord 1870.

(Signed) J. D. TAYLOR,
Dy Clerk.

Sheriff's return on citation.—Filed August 10, 1870.

Received August 9, 1870, and on the same day served a copy of the within citation and accompanying answer and demand in reconvention on the New Orleans, Mobile and Chattanooga Railroad Company, plaintiff herein, through W. S. Williams, its treasurer, in person.

Returned same day.

(Signed) PH. LACOSTE,
Dy Sheriff.

Supplemental answer and demand in reconvention of the City of New Orleans.—Filed October 11, 1870.

Eighth district court for the parish of Orleans.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS. } No. 4.

And now before this court comes the City of New Orleans, and for

further and supplemental answer and demand in reconvention against
venor, Charles Morgan, this appearer shows:
t in the original answer and demand in reconvention the title of the
New Orleans of the real estate and ground situated above and be-
al street, and embracing the property covered by ordinances
N. S., and 1492, N. S., is not fully set forth and designated,
his appearer desires in that respect to correct the original
reconventional demand.
ppearer shows unto the court:

558 That all that portion of real estate or ground claimed by intervenor situated above Canal street, and embraced by ordinance 1492, forms a part of the batture lying in the old faubourg St. Marie, and that on or about the twentieth day of September, A. D. 1820, a certain act was entered into by and between Edward Livingston and other riparian proprietors and the City of New Orleans, wherein and whereby the entire alluvion or batture in front of the aforesaid suburb St. Marie, and the accretion thereafter to become attached to the same, were dedicated to public use and the purposes of business and commerce; and upon the express understanding and condition that the same should thereafter remain and continue a locus publicus, out of commerce, and not to be affected by any adverse claim or grant which might be set up against the same.

That for many years anterior to the authentic act of dedication above referred to, and more than fifty years previous to the passage of the acts of the legislature of the State of Louisiana referred to in the intervenor's petition, certain riparian proprietors owning property in the said faubourg St. Marie, without any particular form or ceremony, converted the entire batture in front of such suburb into a locus publicus, and set the same apart for the use of the public, composed almost entirely of citizens of the United States, upon the condition that the batture thus informally dedicated should remain and continue to be solely appropriated to that purpose.

And this appearer further shows that the aforesaid batture above Canal street, for more than fifty years prior to the acts of the legislature aforesaid, was used and enjoyed as a locus publicus, and in the interests of business and commerce; and that the same, and particularly that portion thereof referred to in plaintiff's petition, is now needed for public use and to meet the exigencies and demands of the business and commercial relations of the city of New Orleans and the wants of the community at large, composed mostly of citizens of the United States.

Further, this respondent says that all that portion of the real estate or ground claimed by intervenor under ordinances 2290 and 799, and lying below Canal street, forms part of the batture lying in front of the "Old city of New Orleans," as this respondent will show upon the trial of this cause.

That on the sixth day of September, 1717, a charter was granted by the King of France to a corporation styled the "Western Company;" that under the auspices of the said company the ground where the old city of New Orleans now stands was selected as a place for the principal settlement of the province, and the foundation of the city was laid; and that in 1724 and 1728, all the batture lying in front of the old city of New Orleans was laid off as a quay, and thus, and otherwise, was dedicated as a locus publicus, and as common property, to the use of which all of the inhabitants of the city of New Orleans, and even strangers, became entitled.

That upon the original plan of this city, as made by the King of

France at its foundation, in the years 1724 and 1728, the aforesaid batture lying in front of the old city of New Orleans, and extending from the front row of buildings down to the river's edge, was recognized as a locus publicus; that such batture was not only needed as a place to be used in common, but has been in the uninterrupted possession and actual enjoyment of the inhabitants of the city of New Orleans, composed almost entirely of citizens of the United States and strangers, as a place of public use from the years 1724 and 1728 down to the commencement of this suit; and that lots and squares of ground
559 abutting upon such batture have been sold and bought, and buildings have been erected on said squares and lots in reference to the said batture then being and forever after remaining a place dedicated to common use.

And this respondent further says that the enjoyment of the grants and privileges set forth and contained in the several acts of the legislature and in the several city ordinances aforesaid will prevent the use of the batture by the public as a locus publicus and highway; will destroy the object of the dedications as hereinabove set forth, and will give to intervenor the exclusive use of ground the use of which alone belongs to and is now needed by the inhabitants of the said city of New Orleans and others.

And this respondent, further answering, says that the State of Louisiana had no right, title, interest, or claim as owner to any portion of the property, ground, or real estate referred to in intervenor's petition, and the city of New Orleans had no right or title thereto which could be divested, and had no right to pass any law or ordinance divesting any of the rights of the owners of said property or of the public in any other way than to authorize property to be taken for the purposes of public utility, and for adequate compensation by the exercise of the right of eminent domain.

That according to the averments of intervenor, the acts of the legislature particularly referred to in his petition, and the enjoyment of the grants and privileges therein and by the aforesaid ordinances pretended to be granted and conferred will give to plaintiff the ownership and control of certain property belonging to this respondent and others without compensation, and will, moreover, give to them the possession of a locus publicus the right to the use and enjoyment of which is in the public, composed almost entirely of citizens of the United States, and will thereby and otherwise interfere with and impair rights vested in and contracts in favor of said owners and the public, composed almost entirely of citizens of the United States; that for these and other reasons the several acts of the legislature of the State of Louisiana and ordinances of the city of New Orleans aforesaid, and the pretended grants and privileges to the said Charles Morgan, as set forth in his petition in intervention, were made, passed, and given in violation of sec. 10, art. 1, of the Constitution of the United States; first section of the 14th amendment to the Constitution of the United States; sec. 20, art. 6, of the constitution of Louisiana, adopted in 1812; art. 109, constitution of said State adopted in 1845; art. 105, constitution of said State adopted in 1852; art. 109, constitution of said State adopted in 1864; and art. 110, constitution of said State adopted in 1868, and are therefore absolutely null and void, and without effect.

Wherefore appearer prays for leave to file this his supplemental answer and claim in reconvention; that the same be taken as explanatory, and as enlarging the averments and allegations of the original answer and reconventional demand, and that judgment be rendered in

favor of this appearer and against the said Charles Morgan, as prayed for in the original answer and demand in reconvention, with costs and general relief.

(Signed) GEO. S. LACEY,
City Attorney.

560 *Order.*

Let this supplemental answer and demand in reconvention be filed as prayed for.

New Orleans, October 11, 1870.

(Signed) HENRY C. DIBBLE, *Judge.*

Agreement.—Filed December 7, 1870.

It is agreed that the following suits in the eighth district court, viz:
No. 4—N. O., M. and C. R. R. Co. vs. City of New Orleans;
No. 345—State of La. ex. rel. S. Belden vs. City of New Orleans;
No. 19—N. O., M. and C. R. R. Co. vs. City of New Orleans et als.;
No. 27.—Same vs. same;
No. 339—B. H. Flasspoller vs. N. O., M. and C. R. R. Co.;
be fixed for trial and taken up and tried together on the ninth (9) day of January, 1871.

New Orleans, December 6, 1870.

(Signed) MILES TAYLOR AND LEOVY & MONROE.
" GEO. S. LACEY,
City Attorney.
" LEA, FINNEY & MILLER.
" J. A. CAMPBELL,
Attorney for N. O., M. and C. R. R. Co.,
" COTTON & LEVY.

Answer and agreement of the City of New Orleans.—Filed January 9, 1871.

Eighth district court for the parish of Orleans.

N. O., M. AND C. R. R. CO. *vs.* THE CITY OF NEW ORLEANS. } No. 4.

To the petition filed by the plaintiff in the above-entitled suit the City of New Orleans appears, and, for answer, denies all and singular the allegations in said petition contained, except so far as may be hereafter admitted.

(Signed) GEO. S. LACEY,
City Attorney.
(Signed) W. W. KING,
Of Counsel.

Agreement.

It is agreed that the City of New Orleans may be allowed to file hereafter a supplemental answer, if it should be desired, the present answer being filed to put the case at issue, so as to facilitate an early trial.

(Signed) MILES TAYLOR,
Attorney for Chas. Morgan,
" J. A. CAMPBELL,
For Plaintiff.

561 *Answer of N. O., M. and C. R. R. Co. to intervention of Charles Morgan.—Filed January* 9, 1871.

Eighth district court for the parish of Orleans.

N. O., M. AND CHAT. R. R. CO.
vs.
CITY OF NEW ORLEANS, CHAS. MORGAN, intervenor. } No. 4.

The said N. O., M. and C. R. R. Co. appears and answers, denying the charge and allegations of the said petition, and except peremptorily that the said contract alleged by said Morgan is illegal, and was consummated after injunctions were issued and while they were in force in the case, and they reaffirm the petition and all the acts stated therein, and they pray as therein prayed.

(Signed) J. A. CAMPBELL,
For Defendants.

Exception referred to merits, and extract from the minutes of January 9, 1871.

N. O., M. AND C. R. R. CO.
vs.
THE CITY OF NEW ORLEANS. } No. 4.

This case, fixed for trial this day, came on. Counsel engaged present.

When, on motion of counsel for defendants, and on suggesting to the court that there is an exception still pending in this case, it was ordered by the court that said exception be referred to the merits, to be tried with the case, and that the case be continued to to-morrow at 11 o'clock a. m.

Continuance.—Extract from the minutes, January 10, 1871.

N. O., M. AND C. R. R. CO.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 4,

This case, fixed for this day for trial, came on. Counsel engaged present.

After hearing pleadings, evidence and counsel, the case was ordered to be continued to January 25, 1871, at 11 o'clock a. m.

Agreement between the City of New Orleans and Charles Morgan, intervenor.—Filed January 25, 1870.

Eighth district court for the parish of Orleans.

N. O., M. AND CHAT. R. R. CO.
vs.
CITY OF NEW ORLEANS, CHARLES MORGAN, intervenor. } No. 4.

Whereas Charles Morgan has filed a petition in intervention

562 in the above-entitled case, in which he prayed to be allowed to intervene in the case, to resist the claims of the said New Orleans, Mobile and Chattanooga Railroad Company and the State of Louisiana, asserted through the attorney-general, who has assumed to act for the same; and has prayed in his said petition in intervention that the injunction issued in favor of the said New Orleans, Mobile and Chattanooga Railroad Company be dissolved and set aside;

And whereas the said Charles Morgan has, in his said petition in intervention, neither made the said City of New Orleans a defendant in the said intervention or prayed for any relief against it;

And whereas there is now pending in the circuit court of the United States for the district of Louisiana a suit in equity, entitled "The City of New Orleans vs. Charles Morgan," No. 6245 of the docket of the said court, which was filed in the said circuit court of the United States on the eighteenth day of June, 1870, and in which an answer was filed on the twenty-third day of August, 1870, wherein the said City of New Orleans has set up certain matters against the said Charles Morgan, and prayed for certain relief therein against the said Charles Morgan, as in the bill of complaint filed in the said circuit court of the United States is specially set forth;

And whereas the City of New Orleans has filed in the eighth district court, in the above-entitled cause, on the sixth of August, 1870, an answer to the said petition in intervention of the said Charles Morgan, and set up therein in reconvention against the said Charles Morgan the same matters set up in the said bill of complaint filed in the circuit court of the United States, No. 6245 of the docket of the said court, as aforesaid;

And whereas no citation has been issued on the said reconventional demand contained in the said answer filed in the said eighth district court in the above-entitled cause, and no service has been made of the same in any manner on the said Charles Morgan:

Therefore, it is now agreed between the said City of New Orleans and the said Charles Morgan, in the above-entitled cause, as follows:

1. That there shall be no proceedings on the said reconventional demand contained in the said answer filed by the City of New Orleans, as aforesaid, in the above-entitled case on the sixth of August, 1870, and that the same shall be regarded as discontinued; and

2. That no decision which may be rendered in the above-entitled case upon the issues presented therein between the said New Orleans, Mobile and Chattanooga Railroad Company and the said Charles Morgan, or the said City of New Orleans, shall have any effect to the injury or prejudice of the said City of New Orleans in the assertion and maintenance of the claims heretofore made by the said City of New Orleans against the said Charles Morgan in the said suit entitled the "City of New Orleans vs. Charles Morgan," now pending in the circuit court of the United States for the district of Louisiana, No. 6245 of the docket of the said court, or any other legal claim of the said city against the said Charles Morgan relative to the subject-matter of contest involved in this cause.

January 12, 1871.

(Signed) GEO. S. LACEY.
City Attorney.

(Signed) MILES TAYLOR,
Attorney for Chas. Morgan.

563 *Note of evidence.—Filed January* 25, 1871.

Eighth district court for the parish of Orleans.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS. } No. 4.

Note of evidence.—Filed January 25, 1871.

Plaintiff offers in evidence the charter and the various acts of the legislature concerning the New Orleans, Mobile and Chattanooga Railroad Company;

Also, map known as the Dunbar map, on file in case No. 19;

Also, letter making the offer to purchase square No. 27 A, at $108,000;

Also, the services and the returns on the services of the injunction.

It is admitted that block 27 A, and all the property embraced in the ordinance proposing the sale to Charles Morgan is embraced in the lands comprehended in the Livingston compromise, so called in the acts of the legislature of the State relative to the confirmation of the sale of that property.

Charles Morgan, intervenor, offers in evidence:

Compromise act of twentieth September, 1820, between Livingston and others, marked A E, and on file in case No. 19;

Also, compromise between municipality No. 2 and property owners, of thirtieth June, 1851, and filed July 30, 1870, and marked A B;

Also, acts of 1850, page 97;

Also, acts of 1855, page 37;

Also, sale of the marshal to Charles Morgan, May 26, 1869;

Also, communication to the city council, marked A C, filed July 30, 1870;

Also, ordinance No. 1492, approved July 15, 1869, marked A D, filed July 30, 1870;

Also, ordinance No. 2290, marked A E, filed July 30, 1870;

Also, ordinance No. 799, marked A F, filed July 30, 1870;

Also, document marked A G, filed April 6, 1870;

Also, acceptance marked A H, filed July 30, 1870;

Also, document marked A I, filed July 30, 1870.

It is admitted that the New Orleans, Mobile and Chattanooga Railroad Company took possession of square No. 27 A on the evening of the approval of ordinance No. 1492.

Charles Morgan also offers in evidence:

Ordinances of the city of New Orleans of May 6, 1866, and December , 1867; copies to be furnished;

Also, the testimony of Van Vleck as to the value of square 27 A, on file in case No. 19.

It is agreed that the exception filed by the city attorney on the 22d October, 1869, be referred to the merits of the case, to be taken up and tried at the same time.

It is agreed that either party may refer to and use the testimony taken in suit No. 19 of the docket of this court, and it is to have the same effect as if offered upon the trial of this cause.

564 *Testimony.—January 26, 1871.*

VAN VLECK, sworn for plaintiff:

Question. Taking in the property embraced in Morgan's proposed purchase—the entire property embraced in that—what would you say would be a fair money price for it in June, 1869?

Answer. I could hardly answer. The great value we set upon it at the time the proposition was made of the $108,000 was the fact of the privileges of the wharf, which went in; and that was of considerable more value to our people than the lands.

Question. You offered, then, to pay $108,000 for it?

Answer. Yes; it was worth more than that to us.

Question. Do you think if it was sold as other property was sold by the city it would bring the same price?

Answer. At the same rate. I presume, superficially, it is about four squares. We bought one large square, for which we paid $63,000 in city currency.

Testimony of Van Vleck as to value of square 27 A.—Filed in case No. 19, July 25th, 1871.

VAN VLECK, sworn for the city:

Question. Look at the red lines on the maps, marked A H 1 and A H 2, and state what is indicated by these red lines.

Answer. The red lines on these maps indicate the original projected centre line of the Chattanooga Railroad, as originally surveyed and mapped, and a copy of the map was filed in the surveyor's office. This map, extending to Toledano street, shows the location, not as it is built at present, but as it was originally projected and designed.

Question. Does not the map A I represent the present location of the Chattanooga Railroad, from Peters street back to Lafayette avenue?

Answer. I cannot answer for all these figures; but the general location is correct.

Question. As far as your knowledge extends, this map, marked B C, shows the present location of the Chattanooga Railroad tracks from Canal to Calliope streets; and, if not, state where it fails to show the proper location of the tracks.

Answer. It fails to show all the tracks, in my opinion. They are substantially located correctly; but there are other tracks which are not located on that map.

Question. Will you be kind enough to state if there is any map offered in evidence showing the present location of the Chattanooga Railroad, from Canal street to Elysian Fields?

Answer. Yes; the map marked A H shows the location of the Chattanooga Railroad there, but only one track has been built. The outer track toward the river has not been built.

Question. What is the distance between the outer side of the inner track and the inner side of the outer track?

Answer. Nine feet. It is fourteen feet from centre to centre, and the tracks are five feet wide.

Question. You are the chief engineer of the Chattanooga Railroad?

Answer. Yes.

565 Cross-examined:

Question. There are some maps originally filed here—those furnished from your office. Are they correct?

Answer. Yes, sir. This map, marked B D, is a correct map, and was made since this case has been on trial at the request of both parties to the suit.

(This map, marked B D, is now filed in evidence.)

By the CITY ATTORNEY. The red lines on document B D indicate the present location of the tracks?

Answer. Yes; the centre lines of the tracks as now laid.

Question. These red lines—four or five—branching off just above Canal street, are they intended to run into that piece of ground between Canal and Poydras streets?

Answer. Yes.

Question. Is that piece designated there for a passenger depot?

Answer. Yes; designated as a passenger depot.

Cross-examined:

Question. Were you present when the Pontchartrain Railroad Com'any made the purchase of those two squares?

Answer. Yes.

Question. Do you remember the prices of other property sold at the same time?

Answer. I bought at that time, for the railroad company, a block of ground between Water, Pilié, St. Joseph and Julia streets, and also one below St. Joseph street between Pilié and Front. I bought those two at public sale. The first one I paid $40,000 in city notes, for city currency; the lower block, I am not certain, but I think I paid $22,000 for.

Question. Were those sales made in city currency?

Answer. Yes, sir.

Question. How much was city currency worth below United States Treasury notes at that time?

Answer. If my memory is correct, they were at about sixteen per cent. discount.

Question. Do you remember how much United States currency was below gold in 1868?

Answer. I do not. This was early in 1868.

Question. How much is United States currency worth, as compared with gold, now?

Answer. Gold stands at 110 to 112, or somewhere along there.

Question. What do you estimate the square No. 27 A worth at this time in United States Treasury notes?

Answer. It is worth $25,000 about; that is the square in dispute, between Girod and Notre Dame streets.

Re-examined:

Question. What do you consider the actual value of those two pieces of property which you say you purchased?

Answer. I paid $40,000 for one.

Question. Do you consider it purchased cheap?

Answer. No, sir.

Question. What do you consider the actual value of that square?

566 Answer. I will say in reference to this, that I did not buy it at first, but after other parties had bid it off; they sold it to us.

Question. What do you consider the actual value of squares No. 27 A and No. 26 A at the present time?

Answer. I do not know that either of them is worth more now than they were then; but they are worth more to us than to anybody else, from the fact that we have certain privileges.

Question. This property, then, is of great value to the road?

Answer. Yes; in connection with our other property.

Question. Are you prepared to say of this property, to which the city surveyor referred, that if it was sold it would not bring the prices indicated on that map?

Answer. I do not know that it would not; I am not prepared to say. I only judge of this from my own purchase.

Question. You cannot say that the property would not bring the prices indicated by him?

Answer. No, I could not.

Question. Did you or your company make any offer for square No. 27 A by itself, or in connection with other property?

Answer. Not to my personal knowledge. I have been informed that the president offered to pay double the price for which it was sold to Mr. Morgan. That includes No. 27 A. He offered to pay $108,000 for the same land sold to Mr. Morgan for $54,000.

Copy of letter offering $108,000 *for square* 27 *A.—Filed January* 25, 1871.

NEW ORLEANS, *July* 15, 1869.

SIR: I, on behalf of the New Orleans, Mobile and Chattanooga Railroad Company in Louisiana, have examined a projected ordinance of the board of aldermen, and which is to be submitted to you for approval.

The proposed ordinance operated upon property included in the grant of the State to that corporation, as contained in the fifteenth section of the act of the 17th of February last.

This corporation has instituted a suit in the fifth district court of the parish of Orleans, relative to the wrong done to the company by the city authorities. They have also submitted a protest for the consideration of the corporate authorities of the city upon the same subject. Notwithstanding this, the ordinance has passed the boards, and we take for granted that the city authorities desire (as far as the action of the boards are to be regarded) to defeat, if they can, the action of the legislature.

The purpose of this communication is still to protest against their action, and at the same time to assure the corporate authorities of the city that this company are prepared to act with entire good faith to them. If the city corporation has any rights which is the subject of sale or disposition by them within the bound of the State grant, our corporation is prepared to make compensation therefor, according to the laws of the State; and such is the object of their suit.

But without prejudice to our claim under the grant of the State, or of the suit under that grant, or of any right, I now submit to the city that we will pay to the corporation for the lands, property and riparian rights included in the proposed sale and grant to Charles Morgan, in the first and second sections of the ordinance, the sum of one hundred and eight thousand dollars.

567 This will embrace a settlement of the said suit for the property embraced in it, and will place the corporation of the city in possession of a price greatly beyond what is proposed in behalf of Charles Morgan. To the extent of this difference, the city authorities, if this ordinance passes and becomes operative, make a donation to Charles

Morgan, while the burden of the suit must be borne by them, which has been already commenced.

Very respectfully,
(Signed) W. S. WILLIAMS.

Hon. J. R. CONWAY,
Mayor of the City of New Orleans.

MAYORALTY OF NEW ORLEANS,
City Hall, Jan. 19, 1871.

The foregoing is a true copy of a letter, dated July 15, 1869, signed W. S. Williams, and addressed to the Hon. J. R. Conway, mayor of the city of New Orleans, and on file in this office.

[SEAL.] (Signed) H. CONQUEST CLARKE,
Secretary.

Act of sale of New Orleans, Opelousas and Great Western Railroad Company by U. S. marshal to Cha's Morgan.—Filed January 25, 1871.

UNITED STATES OF AMERICA,
District of Louisiana:

Whereas I, F. J. Herron, late marshal of the United States for the district of Louisiana, by virtue of a writ of seizure and sale, to me directed by the honorable the circuit court of the United States for the fifth judicial circuit and district of Louisiana, in the suit entitled Charles Morgan vs. The New Orleans, Opelousas and Great Western Railroad Company, after having fulfilled and complied with all the previous legal requisites, did seize the following described property, viz: The whole of the completed grand division of the New Orleans, Opelousas and Great Western Railroad, between Algiers (opposite the city of New Orleans) and Berwick's Bay, now in full operation, constructed by the said company in pursuance of their charter, and being a distance of (80) eighty miles, together with the road-beds of the main tracks and branches, and also all the depots and lands specially appertaining to them; all the buildings, wharves, and all the equipments and franchises belonging and appertaining to this division of the road; and also all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils, implements, right of way and effects generally, of every nature and description whatsoever, in and upon the said division of the said railroad or in any wise attached or appertaining to the same, without any exception or reservation; among which is comprised certain landed property acquired for the use of the said railroad, more particularly described as follows, to wit:

A certain piece or portion of ground, situate in the parish of St. Mary, on the west bank of the Bayou Bœuf, being across the whole depth of the lot of ground belonging to Hypolite Patout, beginning at the water's edge of Bayou Bœuf, at a point thirty-five feet south of the centre line of the said railroad company; thence parallel with the said railroad's centre line westwardly to the line of the property of said Patout and O. Landry; thence westwardly across said railroad sixty feet; thence
568 parallel with said railroad line eastwardly to the water's edge of said bayou; thence southwardly along the margin of said bayou sixty feet to the place of beginning.

2d. A piece of ground having twenty-five feet front on said Bayou Bœuf by fifty feet deep on the upper or north side of said railroad and

adjoining the piece or strip firstly above described, making the whole front on said bayou (85) eighty-five feet.

3d. All the improvements on said portions of land and the appurtenances thereof, and all the rights, ways, servitudes, privileges and advantages thereunto belonging or in anywise papertaining.

That certain portion of a tract of land or plantation on Tiger Island, situate on the eastern bank of Berwick's Bay, acquired by the said company from R. B. & T. T. Brashear, and which formed a part of the tract of land acquired by R. B. & T. T. Brashear in 1842 from their father, Dr. Walton Brashear, by notarial act passed before J. A. Dumatrail, recorder, parish of St. Mary, which act is referred to for particular certification of bounds and limits, to be used for a station-house, etc., not exceeding one acre of land.

That portion of land on the margin of Berwick's Bay extending a distance of one hundred and thirty feet above and two hundred feet below the centre line of the railroad with the wharves, sheds, and other buildings thereon.

All that portion of land on the margin of Berwick's Bay occupied for a coal-yard wharf, and for a cattle landing, and for the uses and purposes connected with said railroad.

The quantity of land for a station-house, water-tank or depot, and not exceeding one acre in superfices, on the immediate line of the road, and making part of a tract formerly owned by Charles O'Brien, situate on the northern bank of Bayou Bœuf, in the parish of St. Mary, and bounded on the east by the lands of John Collins and on the west by lands of Young.

A quantity of land for a station-house, water-tank or depot, and having one acre in superfices on the immediate line of the road, and being part of a tract of land formerly owned by J. A. Wofford, on the north bank of Bayou Bœuf, in the parish of St. Mary, bounded on the east by the land of John Tarleton and on the west by land of J. Y. Saunders.

A quantity of land, one acre in superfices, on the immediate line of the road, for a station-house, water tank or depot, and making part of a tract of land owned by John Tarleton in 1853, and situated on the north bank of Bayou Bœuf.

A quantity of land for a station-house, water-tank or depot, on the line of said railroad, and making part of a certain tract of land owned in 1853 by J. Y. Saunders, and situated on the north bank of Bayou Bœuf, parish of St. Mary, and bounded on the east by lands of J. A. Wofford and on the west by lands of Charles Bailiss.

A certain portion of ground situate in the parish of Terrebonne, in this State, being of a triangular form, and bounded on one side by the line of the road of said New Orleans, Opelousas and Great Western Railroad Company, and on the other side by property of Daniel Morrison, and on the third line by the public road leading along Bayou l'Outre to Attakapas. Said piece or portion of land, together with all the rights, ways, servitudes, privileges and advantages thereunto belonging or in anywise appertaining.

A lot or tract of land with a front of one hundred and twenty-five feet, or sixty-two feet six inches on each side of the centre line
569 of the railroad embankment, on the public road, by a depth of three hundred feet between parallel lines running parallel with the centre line of the railroad and westward from the Bayou Terrebonne. Also another lot or tract of land fronting on the Bayou Terrebonne five hundred feet, or two hundred and fifty feet on each side of the centre

line of said railroad, and comprising the whole of the space between said front and the public road.

The following described portions of land, formerly belonging to Philip B. Key, and situated and being in the Lafourche swamp land, on Bayou Bleu, and bounded as set forth and described in a notorial act passed before J. G. White, notary, dated at Thibodeaux, on third of May, 1854, between Philip B. Key and the said New Orleans, Opelousas and Great Western Railroad Company; one of said tracts containing forty-two thousand superficial feet, and the other containing about seventy thousand four hundred superficial feet.

A certain lot or tract of land situated on Bayou des Allemands and upon the upper or right side (looking west) of the road where it strikes said bayou, which was acquired to construct and maintain wharves, sheds, or such other buildings as the said railroad company might require, or for any other purpose whatsoever. Said lot or tract of land is described as follows, to wit, beginning at a point in the centre of the main tract of the railroad, at the east end of the revolving drawbridge; thence northeastwardly along the centre of said main tract one hundred feet; thence northwestwardly, at right angles, to the line of the railroad (250) two hundred and fifty feet; thence in a parallel line to the railroad southwestwardly to the bank of the Bayou des Allemands; thence along the margin of said bayou southeastwardly to the point of beginning.

A certain quantity of land (30) thirty feet in width by one hundred feet in depth, parallel and adjoining the said railroad, on the levee side of the Destrehan or Harvey's Canal, and on the side nearest to the river, and commencing on the line of said canal, acquired to erect station-house, water-tank or depot and house for bridge-keeper.

All those portions of ground lying and being in the town of Brooklyn, near Gretna, as laid out by the said New Orleans, Opelousas and Great Western Railroad Company, and represented in a plan No. 40, made by the authority of said company, and deposited in the office of Selim Magner, a notary public in and for the city of New Orleans and parish of Orleans, which said portions of ground are composed: 1st. Of all the squares represented in said plan and lying between Front street and extending to the Mississippi River; and, 2d. Of all the space, extending entirely across the said town of Brooklyn, and from Sixth street to the Mississippi River, as represented, delineated and laid down on the said plan, as reserved for the use of the said New Orleans, Opelousas and Great Western Railroad Company, and bounded by the squares and fractional squares numbered on the said plan by the numbers 7, 8, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 23 and 24, which said portions of ground are embraced in and made a part of a certain tract of land or plantation situate on the right bank of the Mississippi River, in the parish of Jefferson, about two miles above the city of New Orleans, fronting partly on the first and partly on the fourth districts of New Orleans, having four arpents eleven toises front on the river Mississippi by forty-five arpents in depth, between parallel lines, with all the improvements thereon.

A certain portion of ground situate in the town of Gretna, in the parish of Jefferson, in square bounded by Fourth and Fifth streets, Lafayette avenue, and the village of Mechanickham, measuring thirty feet front on Fourth street by nineteen feet in depth on the line
570 nearest to Mechanickham, and seventeen feet three inches in depth on the side nearest to Lafayette avenue.

A certain portion of ground situate in the town of Gretna, in the parish

of Jefferson, being part of a lot designated by No. 14 in square No. 7 of the plan of said town, drawn by E. H. Springbet, architect and surveyor, on the twenty-fourth of June, 1839, and deposited in the book of plans of J. B. Marks, notary, in New Orleans. Said portion of ground measures thirty-nine feet two inches and five lines front on Fourth street by thirty feet in depth on the side nearest Mechanickham, and nineteen feet two inches on the line of property belonging to Jacob Saunders.

A certain portion of ground in the village of Mechanickham, in the parish of Jefferson, in square designated by No. 9, on a plan by H. Grant, second February, 1842, and deposited in the office of L. R. Kenny, late notary. Said square is bounded by Third, Fourth, and Cuvier streets, and Copernic avenue. Said portion of ground measures one hundred and twenty-five feet front on Fourth street by five feet ten inches in front and in depth on Copernic avenue, and ten feet six inches in depth on the line nearest Cuvier street, and forms part of a lot of ground designated by lot No. 1 of said square No. 9.

A certain portion of ground situate in the village of Mechanickham, in the parish of Jefferson, in square designated by No. 13, bounded by Fourth street, Fifth and Lavoisier streets and the dividing line of Gretna and Mechanickham, as represented on a certain plan made by H. Grant, dated second February, 1842, and deposited in the office of the above notary. Said portion measures seventy-three feet ten inches and two lines front on Fourth street by twenty feet ten inches on the side nearest to Lavoisier street, and twenty feet ten inches on the dividing line of Gretna and Mechanickham, and forms part of lot No. 2 of square No. 13, as per said plan.

A certain portion of ground situate in the village of Mechanickham, in the parish of Jefferson, being part of a lot of ground designated by No. 1, in square No. 7. Said lot forms the corner of Lafayette avenue and Fourth street. Said portion measures, in English measure, one hundred and fifty feet front on Fourth street by seventeen feet three inches on the dividing line of property belonging to Honore Dost, f. m. c., and sixteen feet two inches in depth and front on Lafayette avenue.

A certain portion of ground situate in the town of Gretna, parish of Jefferson, being a portion of lots 1 and 2 in square designated by No. 8 on a plan of said town, bounded by Lafayette avenue, Fourth and Fifth streets and the lower line of said town. The said two lots of ground adjoin each other, and measure each thirty feet front on Lafayette avenue by a depth of one hundred and fifty feet between parallel lines. No. 1 forms the corner of Lafayette avenue and Fourth street. All American measure.

A certain portion of ground situate in the village of Mechanickham, in the parish of Jefferson, in square bounded by Fourth, Newton, Fifth and Lavoisier streets, per plan of thirty-five lots of ground situate in said village, made by A. DeYoung, architect, dated twenty-seventh June, 1851, and deposited in the office of L. R. Kenny, late notary. Said portion of ground measures one hundred and ten feet front on Fourth street by (16) sixteen feet in front and depth on Lavoisier street, twelve feet in depth on the dividing line of lot No. 13, and one hundred and ten feet, more or less, on the rear line. Said portion of ground being a part of lot No. 10, forming the corner of Lavoisier and Fourth streets.

A certain strip of ground formerly a portion of lot No. 7, meas-
571 uring in length one hundred and seventy-five feet, or the depth of said lot, situate on Fourth street, in square No. 9, in the village

of Mechanickham, in the parish of Jefferson. The said strip of land measures on Cuvier street twelve feet, and at the other end of said strip of land, on Fourth street, it measures ten feet.

A certain piece or portion of ground situate in Mechanickham, parish of Jefferson, in the square bounded by Third, Fourth, Copernic avenue and Cuvier streets, making part of lot designated as No. 1 of square No. 9 on a plan drawn by H. Grant, surveyor, on February 2, 1842, deposited in the office of L. R. Kenny, late notary for the parish of Jefferson, which piece measures one hundred and twenty-five feet front on the street or railroad, twenty-seven feet in depth on Copernic avenue, and twenty-seven feet in depth on the line of property of J. S. Whitaker.

A certain piece or portion of ground situate in Mechanickham, parish of Jefferson, in the square bounded by Lavoisier, Newton, Fourth and Fifth streets. Said piece or portion measuring one hundred and ten feet on Fourth street, twelve feet deep from the line of the street and front on Newton street, and fourteen feet deep from the line of the street next to the property of G. Hahn.

A certain portion of ground situate in Mechanickham, parish of Jefferson, forming part of lot designated by No. 4 of square No. 11, bounded by Third, Fourth, Lavoisier and Newton streets, as represented on a plan of H. Grant, surveyor, dated second February, 1842, deposited in the office of the late L. R. Kenny, notary for the parish of Jefferson, which portion measures twenty-five feet front on Fourth street, six feet in depth, from the line of the street adjoining property of J. Gering, and five feet in depth from the line of the street on the side adjoining property of F. Kraume.

A certain piece or portion of ground situate in Mechanickham, parish of Jefferson, forming part of lot No. 12 in square No. 15, bounded by Newton, Fourth and Fifth streets and Copernic avenue, as represented on a plan of A. DeYoung, surveyor, on the twenty-third of January, 1851, deposited in the office of J. R. Bargsbede, recorder and ex-officio notary for the parish of Jefferson, on the twenty-sixth of March, 1851, which portion of ground measures thirty feet front on Fourth street, or the railroad, five feet deep from the line of the street, on a line adjoining property of F. Anselm, and six feet deep, from the line of the street, on a line adjoining property of P. Vollner.

A certain piece or portion of ground situate in Mechanickham, parish of Jefferson, forming part of the lot of ground designated by No. 12 of square bounded by Lavoisier, Fifth, Newton and Fourth streets, as represented on a plan deposited in the office of Theodore Guyol as plan No. 312, which portion of ground measures thirty feet front on Fourth street, fourteen feet in depth from the line of the street and next to the property of G. Spangenburg, and thirteen feet in depth from the line of the street, on the lower line.

A certain piece or portion of ground situate in Mechanickham, parish of Jefferson, forming part of the lot designated by No. 4 of square No. 11, bounded by Third, Fourth, Lavoisier and Newton streets, as represented on a plan of H. Grant, surveyor, dated second February, 1842, deposited in the office of L. R. Kenny, late notary for the parish of Jefferson, which portion of ground measures twenty-five feet front on Fourth street, seven feet from the line of the street, adjoining property of Joseph Heickerbridge, and six feet in depth from the street adjoining the property of N. Kesler.

572 A certain piece or portion of ground situate in Mechanickham, parish of Jefferson, forming part of lot No. 7 in square No. 10, as represented on a plan of H. Grant, surveyor, dated February 2,

1842, deposited in the office of the late L. R. Kenny, notary public in the parish of Jefferson, which portion of ground measures one hundred and twenty-five feet front on the railroad on Fourth street, nineteen feet in depth from the line of said street and front on Copernic avenue, and fourteen feet in depth on the line of property belonging to J. Walter.

A certain piece or portion of ground situate in Mechanickham, parish of Jefferson, in square No. 11, bounded by Third, Fourth, Newton and Lavoisier streets. Said piece of ground measuring seventy-five feet front on Fourth street or the railroad of said company, three feet in depth from the line of the street, on the line of the property belonging to T. Kraume, and nothing on the lower line next to Lavoisier street, with the rights, ways, servitudes, privileges and advantages thereunto belonging.

A certain piece or portion of ground situate in Mechanickham, parish of Jefferson, forming part of lot No. 3 in square No. 11, bounded by Third, Fourth, Lavoisier and Newton streets, as represented on a plan of H. Grant, surveyor, dated February 2, 1842, deposited in the office of the late L. R. Kenny, notary public for said parish of Jefferson, which portion of ground measures fifty feet front on Fourth street, five feet deep on the line of property of N. Kesler, from the street, and three feet deep from the line of the street on the line of property of C. Hausknecht.

A certain piece or portion of ground situate in Mechanickham, parish of Jefferson, forming part of lot No. 5 in square No. 11, bounded by Third, Fourth, Lavoisier and Newton streets, as represented on a plan of H. Grant, surveyor, dated February 2, 1842, deposited in the office of the late L. R. Kenny, notary public in said parish of Jefferson, which said portion measures fifty feet front on Fourth street or the railroad, eight feet deep and front on Newton street from the line of the street, and nine feet deep on the line of property of Joseph Gering.

A certain piece or portion of ground situate in Mechanickham, parish of Jefferson, in the square bounded by Copernic avenue, Third, Fourth and Newton streets, measuring one hundred and twenty-five feet front on Fourth street, fourteen feet deep on the line of property of J. Hoehn, and nine feet deep and front on Newton street, forming part of lot No. 1, as represented on a plan of H. Grant, surveyor, deposited in the office of the late L. R. Kenny, notary public for the parish of Jefferson.

A certain piece or portion of ground situate in Mechanickham, parish of Jefferson, forming part of a lot of ground designated by No. 8 on a plan made by H. Grant, surveyor, dated February 2, 1842, deposited in the office of L. R. Kenny, late notary for the parish of Jefferson, which portion measures fifty feet front on the railroad by twenty-seven feet deep from the said railroad, with all the rights, ways, privileges, and advantages thereunto belonging.

A certain piece or portion of ground situate in Mechanickham, parish of Jefferson, in square No. 9, bounded by Copernic avenue, Third, Fourth and Cuvier streets. Said portion being taken from a lot designated as No. 7 on a plan of H. Grant, surveyor, dated second February, 1842, deposited in the office of the late L. R. Kenny, notary public for the parish of Jefferson, and the same measures one hundred and twenty-five feet front on Fourth street, or the railroad, by a depth of seventeen feet, together with all the rights, ways, servitudes, privileges, and advantages thereunto belonging or in any wise appertaining.

A certain piece or strip of ground, with the rights, ways, and servitudes thereunto belonging, situate in Mechanickham, parish of
573 Jefferson, in square bounded by Fourth and Fifth streets, Copernic avenue and Newton street, forming part of the lot designated by the No. 22, as represented on a plan made by A. DeYoung, on the twenty-third of January, 1851, deposited in the office of Samuel Pursell, late recorder in and for the parish of Jefferson, which piece or strip of ground measures five feet in rear, adjoining property belonging to the railroad, one hundred and ten in depth on the remainder of lot No. 22, belonging to Zeryea, about ten feet in front and depth on Fourth street, and running to a point up to Copernic avenue.

A certain tract of land situate in the parish of Orleans, on the right bank of the Mississippi River, opposite the city and in front of the faubourg Washington, said tract of land having three hundred and seventy-five feet front on the Mississippi River by twenty-four arpents in depth between parallel lines, being forty-six arpents of superficial measure, bounded above by a street fifty feet wide called the Verret avenue, separating the said tract of land from the lands now or heretofore of the Brooklyn Warehouse Company, and below by a street called Thayer avenue, separating said tract of land from the remainder of the tract of and belonging to said Furcy Verret, together with all the improvements thereon and appurtenances thereof; a bulkhead, two wharves, and all the rights, ways, servitudes and advantages, thereunto belonging. And after having given due legal notice to the said defendants, the New Orleans, Opelousas and Great Western Railroad Company, of the said seizure in the manner pointed out by law, I advertised the said property for sale, according to law, after the expiration of the legal delay from the service of said notice, by advertisements announcing the sale to take place at the entrance to the custom-house, on Old Levee street, between Canal and Custom-house streets, in this city of New Orleans, on the twenty-fifth day of May, 1869, at 12 o'clock m. Said advertisements were inserted and published in three newspapers in the city of New Orleans, to wit, in the Commercial Bulletin, New Orleans Picayune and New Orleans Republican, from the sixteenth day of April, 1869 to the day of sale, being full thirty days from the date of the first notice given in said newspapers. Said advertisements were inserted in said newspapers on the sixteenth, twentieth, twenty-fourth and twenty-ninth of April, 1869, and on the fourth, eleventh, eighteenth and twenty-fifth of May, 1869. And after having further complied with and performed all the additional previous legal requisites, and after the said property had been duly appraised, I did expose the same at sale at public auction, to the highest bidder, according to law, at the said entrance to the custom-house, on Old Levee street, between Canal and Custom-house streets, in this city, on the said twenty-fifth day of May, 1869, at 12 o'clock m., when, after making due proclamation of said sale and duly crying the said property and appurtenances, the same were adjudicated to Charles Morgan, of the city of New York, he being the last and highest bidder thereon, for the price and sum of two millions and fifty thousand dollars ($2,050,000), of which said sum, according to the terms and conditions of the sale ($686,000) six hundred and eighty-six thousand dollars and the costs of suit, to wit, ($15,825) fifteen thousand eight hundred and twenty-five dollars, were paid to me in cash, in United States Treasury notes, and the balance of the purchase-price, to wit, ($1,348,175) one million three hundred and forty-eight thousand one hundred and seventy-five dollars, the said purchaser, Charles Morgan, assumes

payment of, in favor of the holders of nineteen hundred and eighty-seven bonds of the New Orleans, Opelousas and Great
574 Western Railroad Company, issued on the first of April, 1869, and payable on the first day of April, 1889, and identified with a certain notarial act passed on the first day of April, 1859, between the said company and Edmond J. Forstall, and by which said assumption the said Charles Morgan is bound, and by the acceptance hereof promises and binds himself to pay to the legal holders of the said bonds, or of any of them, the sum of six hundred and seventy-eight dollars and forty-eight cents ($678.48) on each one of the said bonds, payable on the first day of April, 1889, with interest on the said sum of ($678.48) six hundred and seventy-eight dollars and forty-eight cents at the rate of eight per cent. per annum, from the (25th) twenty-fifth day of May, 1869, payable on the first day of October, 1889, and on the first day of April and of October of each year thereafter, as is stated and set forth in an endorsement upon each one of said bonds, printed in red ink, with the signature of F. J. Herron, late United States marshal, in order to identify said bonds with this sale. And to secure the payment of the said sum of ($678.48) six hundred and seventy-eight $\frac{48}{100}$ dollars, payable on each of the said bonds and of the interest to accrue thereon, all of the said property so sold and adjudicated to the said Charles Morgan remains specially mortgaged and hypothecated, according to the terms of the said adjudication, in favor of the holders of the said bonds, and each of them, until the final and entire payment of the said sum of six hundred and seventy-eight $\frac{48}{100}$ dollars, payable as aforesaid, on each of the said bonds and the interest to accrue thereon.

And it appears from duly certified copies from the records in the offices of the recorders of mortgages for the parish of Orleans, St. Charles, and Lafourche, which certificates are annexed to the writ of seizure and sale under the authority of which the above-described property has been sold, that there are none other than the following mortgages recorded against the above-described property, viz: In the parish of Orleans, B. 73, F. 85. The one granted in favor of Edmond J. Forstall, per act before Selim Magner, notary public, dated first April, 1859, to secure two millions dollars, interest and costs, recorded April 8, 1859, and reinscribed in book 87, folio 215.

B. 84, F. 600. The one granted in favor of Samuel Smith or others, per act before same notary, dated first March, 1867, to secure the sum of one million dollars, interest and costs, recorded twenty-fourth of May, 1867.

The general one in favor of Hassam & Anderson, resulting from a judgment rendered by the sixth district court on the twenty-seventh of May, 1864, for the sum of $8,325.46, with interest stipulated in said judgment and costs of suit; recorded B. J. M. No. 11, folio 313.

The general one in favor of H. L. Youngs, resulting from a judgment rendered by the parish court of St. Charles on the ninth December, 1868, for $500, with interest stipulated in said judgment and costs of suit; recorded B. J. M. No. 13, folio 148.

In the parish of St. Charles: The general one in favor of H. L. Youngs, resulting from a judgment rendered by the parish court of St. Charles on the ninth of December, 1868, for the sum of $500, with interest stipulated in said judgment and costs of suit; recorded B. No. 1, folio 183.

The judicial mortgage which exists by the recording of a judgment rendered by the honorable the fifth district court of New Orleans in

the case of Louis Mestier vs. New Orleans and Opelousas Railroad Company and Ambrose Lanfear, in favor of said Louis Mestier and against Ambrose Lanfear, for the sum of $10,000, with legal interest from
575 the third day of March, 1859, till paid and costs of suit; which judgment was rendered on the tenth of December, 1859, and recorded on the 28th February, 1860.

The judicial mortgage which exists by the recording of a judgment rendered by the honorable fifth district court of New Orleans in the suit of Louis Mestier vs. New Orleans, Opelousas and Great Western Railroad Company and Ambrose Lanfear, in favor of Louis Mestier and against Ambrose Lanfear, for the sum of $15,000 and costs of suit: which judgment was rendered on the twenty-eighth of June, 1864, and recorded on the seventh day of September, 1864.

In the parish of Lafourche: A judicial mortgage against said New Orleans, Opelousas and Great Western Railroad Company and in favor of Evariste Lepine, for the sum of $300, with legal interest from the nineteenth day of June, 1867, and costs of suit. Inscribed June 28, 1867.

And the late United States marshal aforesaid has by his official authorization directed the recorders of mortgages in and for the parishes of Orleans, St. Charles, and Lafourche to cancel and annul all mortgages bearing on the above-described property subsequent to the plaintiff's first mortgage, which was recorded on the eighth day of April, 1859, and which said first mortgage is, by the authorization of the United States marshal, diminished to the sum of one million three hundred and forty-eight thousand one hundred and seventy-five dollars ($1,348,175), payable on the first day of April, 1889, with interest thereon from the twenty-fifth day of May, 1869, at the rate of eight per cent. per annum, payable semi-annually, on the first day of April and the first day of October of each year, to the holders of said nineteen hundred and eighty-seven bonds of the said New Orleans, Opelousas and Great Western Railroad Company.

Now, therefore I, F. J. Herron, late United States marshal aforesaid, in consideration of the premises, and by virtue of the laws in such cases made and provided, do hereby sell, transfer, assign, convey, and set over unto the said Charles Morgan, his heirs, administrators, executors and assigns, the aforesaid property and appurtenances; to have and to hold the said property and appurtenances unto the said Charles Morgan, his heirs, administrators, executors and assigns, to his own and their proper use, benefit and behoof forever.

In testimony of which I grant these presents under my signature as late United States marshal aforesaid, in the city of New Orleans, on this the thirty-first day of July, A. D. (1869), one thousand eight hundred and sixty-nine, and of the Independence of the United States of America the ninety-fourth.

(Signed) F. J. HERRON,
Late U. S. Marshal for the District of Louisiana.

Executed in the presence of—
(Signed) J. R. WEST.
" JOHN FAHY.

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I hereby certify that the foregoing deed of sale was this day recorded in this office in Book of Sales No. 2, folios 325 to 340, inclusive.

Witness my hand and seal of said court at New Orleans, August 24, 1869.

[SEAL.] (Signed) D. URBAN, *Clerk*,
Pr. F. B. VINOT, *Dy Clerk*.

576 Registered in conveyance office in this city, in B. 97, folios 208, 209, 210, 211, 212, 213, and 214, on Thursday, the sixteenth day of September, 1869, at the hour of 12 o'clock m. and twenty-five minutes.

New Orleans, September 16, 1869.

[SEAL.] (Signed) A. MOREL, *Deputy*.

I, the undersigned, deputy recorder of mortgages in and for the parish and city of New Orleans, do hereby certify that the within deed was this day duly recorded in this office, in book 88, folios 50 to 55, inclusive.

New Orleans, September 17, 1869.

[SEAL.] (Signed) C. DARCANTEL, *Deputy*.

Registered in conveyance office, in book L, folios 252, 253, 254, 255, 256, 257, 258, 259, on this twenty-second October, 1869.

Jefferson Parish, La., October 22, 1869.

[SEAL.] (Signed) THOMAS McCORMICK, *Recorder*.

RECORDER'S OFFICE,
St. Mary's Parish, La.

I, James G. Parkerson, recorder, do hereby certify that so much of the foregoing marshal's deed as embraces description of lands, etc., in the parish of St. Mary aforesaid, and terms, price, adjudication and conditions, has been recorded in book No. 23 of conventional mortgages, page 213, No. 14327, and book Q of conveyances, page 194, No. 11684, of my office on the twenty-ninth day of October, 1869.

In evidence whereof, witness my official seal and signature, October 29, 1869.

[SEAL.] (Signed) J. G. PARKERSON, *Recorder*.

RECORDER'S OFFICE,
Parish of Terrebonne.

I do hereby certify that so much of the foregoing marshal's deed as embraces description of land, etc., in the parish of Terrebonne aforesaid, and terms, price, adjudication, and conditions, has been duly recorded in book Y of conveyances, page 344, and book I of mortgages, page 476, this day, according to law.

[SEAL.] (Signed) JNO. J. MUSHAWAY, *Recorder*.

HOUMA, LA., *November* 1, 1869.

RECORDER'S OFFICE,
Parish of Lafourche.

I certify the foregoing deed to have been duly recorded in this office this day, in both the conveyance and mortgage records of this office.

Witness my hand and seal of office this the fourth day of November, A. D. 1869.

[SEAL.] (Signed) EMILE E. LE BLANC,
Dy Recorder.

577 I, T. T. Baudoin, recorder of the parish of St. Charles, certify that the within conveyance and mortgage were, this eighteenth day of November, eighteen hundred and sixty-nine, inscribed in the conveyance and mortgage books of my office.

[SEAL.] (Signed) T. T. BAUDOIN, *Recorder.*

I, N. A. Pintado, recorder of the parish of Assumption, certify that the within conveyance and mortgage were, this nineteenth day of November, 1869, inscribed in the conveyance and mortgage book of my office.

[SEAL.] (Signed) N. A. PINTADO, *Recorder.*

578 *Document "A E" and translation.—Act of compromise between Livingston and others, September* 20, 1820.—*Filed January* 10, 1871.

En la ville de la Nouvelle Orléans, dans l'État de la Louisiane, le vingt de septembre mil huit cent vingt, et la quarante-cinquième année de l'Indépendence des États-Unis d'Amérique, par devant Hugues Lavergne, notaire public, dûment commissionné, dans et pour la ville et paroisse de la Nouvelle Orléans, y résident, et en présence des témoins ci-après nommés et soussignés, sont personnellement comparus les sieurs Edward Livingston, Jean Gravier, Louis Barthélemi Macarty, Christophe Toledano, Vincent Rillieux, Toussaint Mossy, Elie Victor Jourdain; Manette St. Amand, femme de couleur, libre et majeure d'âge; Henry McCall, agissant tout en son nom qu'en celui de Joseph J. Winter, son associé; Étienne Mazureau, fondé de pouvoirs d'Alexandre Labranche, pouvoirs dont il nous a justifié; l'honorable James Pitot, agissant pour et au nom de dame Jeann' Bordier, épouse du sieur Jean Mathieu Hélant Petit, et de Bertrand Gravier, jeune, et de demoiselle Jeanne Gravier, fille majeure, tous résidans en France, en vertu des procuration et supplément de procuration que la dite dame Petit avait adres'ée au sieur Nicolas Alphonse Desmare, par acte au rapport de Deschamps et son confrère, notaires à Bordeaux, sous la date des seize juillet mil huit cent dix-sept et vingt-cing septembre mil huit cent dix-huit, et de celle que le dit sieur Bertrand Gravier, jeune, et de demoiselle Jeanne Gravier avait adressée à Pierre Derbigny, par acte au rapport et son confrère, notaires à Bergerac, le dix-huit juin mil huit cent dix-sept, toutes lesquelles procurations sont déposées en l'étude de Michel de Armas, notaire public en cette ville, et ont été substituées au dit sieur James Pitot par les dits sieurs Desmare et Derbigny, par acte *une* date des cinq et dix juin derniers, déposée au même lieu; Barthélemi Lafon, au nom et comme exécuteur testamentaire de feu Pierre de la Bigarre; et le sieur John W. Oddie, fondé de pouvoirs générale et spéciale de Margaret, veuve de feu Pierre de la Bigarre, de Maria Louisa de la Bigarre, veuve de P. Hewart, et de demoiselle Amarylis Laura de la Bigarre, tous lesquels comparans demeurent de la Nouvelle Orléans, d'une part; et l'honorable Joseph Rouffignac, maire de la Nouvelle Orléans, y demeurant, agissant et stipulant pour et au nom des maire, aldermen et habitans de la Nouvelle Orléans, en vertu de la délibération du conseil de ville sous la date du trente et un août dernier, dont expédition en bonne forme est ci-annexée.

Lesquels premie's comparans, soit en leurs noms personnels que dans les qualités qu'ils précédent, et comme possesseurs actuels de la batture en face du faubourg Ste. Marie, ou les représentant, voulant favoriser le public dans l'usage du bord du fleuve qui se trouve en face de la dite batture, et faciliter la communication des rues qui doivent y

aboutir, ils ont, par les présentes, fait donation, entre vifs et irrévocable, en la meilleure forme que donation puisse valoir, aux maire, aldermen et habitans de la Nouvelle Orléans, représentés par l'honorable Joseph Roffignac, maire de la dite ville, ici présent, et acceptant et stipulant pour les dits maire, aldermen et habitans en vertu de l'autorisation à lui donnée à cet effet par le conseil de ville dans la délibération du trente et un août dernier, dont copie est ci-annexée, tous le droits que les dits donateurs ont ou peuvent avoir, chacun en ce qui le con-
579 cerne: 1. Dans tout cette portion de la dite batture ou alluvion que existe à partir de la borne inférieure de la propriété de Mr. William W. Montgomery, et à venir en descendant jusqu'à la borne entre la ville et le faubourg Ste. Marie, et à prendre depuis le pied de la levée neuve à son extérieur jusqu'à la ligne marginale des eaux du neuve, lorsqu'elles sont les plus basses; 2. Dans la levée neuve qui a été construite sur toute l'étendue de la dite portion de batture, ainsi que le sol sur lequel elle est assise, telle que la dite levée se trouvera lorsqu'elle aura été réparée, augmentée et garnie en bois dans toute son étendue par les dits donateurs, ainsi qu'il est ci-après convenu; 3. Dans le sol nécessaire pour le prolongement des rues du dit faubourg jusqu'à la levée neuve, lesquelles seront ouvertes et remblayées, et accompagnées de plates-formes et de rampes sur le fleuve, aux frais des dits donateurs, ainsi qu'il sera prescrit dans la suite de cet acte; et 4. Dans le sol de la rue des Chapitoulas dans toute l'étendue du dit faubourg, en lui donnant soixante pieds de largeur, y compris les trotoirs ou banquettes; tout lesquels terrains ainsi donnés ne sont sujets à aucunes hypothèques de la part des dits donateurs, ainsi qu'il résulte du certificat du conservateur de cette ville sous la date de ce jour, à l'exception des suivantes, savoir:

Trente-deux mille huit cent quatre-vingt-neuf piastres d'hypothèques donnés par Mr. Edward Livingston de la manière suivante, savoir: Douze mille huit cent vingt et deux piastres, en faveur de James Johnston, sur le terrain numéro deux figuré au plan ci-annexé, certifié par Mr. Livingston et paraphé "ne varietur" par le notaire soussigné; quatorze mille trois cents piastres, en faveur de Mess. Vincent Nolte et Laurent Millaudon, sur les trois lots faisant encoignure des rues Notre Dame et de la levée nouvelle, figurée au dit plan sous les numéros dix-huit, dix-neuf et vingt; trois mille cinq cents piastres, en faveur de Joseph Segura, sur le lot de terre numéro onze; mille deux cent soixante-neuf piastres, en faveur de James Ramsay, sur le terrain numéro treize au dit plan, tous lesquels terrains n'empiètent en aucune manière sur les terrains et prolongemens de rues qui font l'objet de la présente donation, ainsi qu'il appert du susdit plan. De plus, neuf cent quatre-vingt-cinq piastres soixante-huit cents et trois quarts d'hypothèques judiciaires contre le sieur Gravier, résultant de divers jugemens rendus en faveur de personnes suivantes, savior: John Boissier, pour quatre cent soixante et quatorze piastres six cents et un quart, et les intérêts, et Joseph Taboni, pour la somme de deux cent quarante-cinq piastres quatre-vingt-un cents et un quart, et deux cent soixante-cinq piastres quatre-vingt-un cents un quart, et les intérêts. De plus, deux mille soixante-sept piastres d'hypothèques tacites contre John Linton, pour cautionnement donné à la cour des preuves pour Stephen Duncan, curateur à la succession d'Hamilton Blakony. Et, enfin, cinquante mille piastres d'hypothèques données par Pierre de la Bigarre à Jean Gravier pour sureté pour la vent de la batture.

Le présente donation est faite à la condition expresse, sans laquelle la

dite donation n'aurait pas eu lieu, savoir: Que tous les terrains qui font l'objet de la présente donation resteront inalienables et insaisissables, pour dettes ou autrement, entres les mains de la corporation de la Nouvelle Orléans, qui ne pourra jamais, et sous aucun prétexte (ainsi qui les dits maire, aldermen et habitans de la Nouvelle Orléans, représentés qu'il sont, s'y obligent expressément par les présentes), les vendre, échanger, donner ou en disposer autrement, en tout ou en partie, d'aucune manière quelconque, ni les employer à d'autres usages publics que ceux auxquels ils sont naturellement destinés, ni même y faire aucune constructions ou bâtisses, sauf néanmoins le seul cas où le conseil de ville jugerait convenable à l'intérêt général d'autoriser l'établissement d'une pompe à feu sur telle
580 portion de la batture ainsi donnée que le conseil croirait devoir choisir à cet effet. Il est convenu, cependant, que cette restriction de faire des bâtisses ou constructions de la part de la corporation ne pourra être interpretée de manière à empêcher le maire et le conseil de ville de la Nouvelle Orléans d'établir ou de faire établir des jettées ou warfs pour la facilité du commerce, lorsque les dits maire et conseil de ville le jugeront convenable.

Et en considération de la présent donation, et des avantages qui peuvent en résulter pour toutes les parties, les dits donateurs déclarent s'obliger conjointement par les présentes, envers les dits donataires, et ce accepté par eux, à faire réparer ou augmenter la nouvelle levée ainsi donnée, dans toute son étendue, de manière à ce qu'elle ait soixante pieds de crête; laquelle levée*e* devra être confectionnée et parachevée dans la direction des lignes coloriées en jaune sur le plan ci-annexé, et désignées par les lettres A, B, C, D, lequel plan sera paraphé "ne varietur;" et la dite levée devra être revêtue en bois de cypre de la même manière que l'est la partie de la levée qui se trouve en face de la ville, entre les rues Conti et Bienville; et les dits donateurs s'obligent, de plus, en ce qui les concerne envers les dits donataires, ce accepté par eux, à ouvrir et exhausser à leurs frais toutes les rue du dit faubourg Ste. Marie qu'il s'agit de prolonger depuis la rue des Chapitoulas jusqu'à la levée*e* neuve ainsi donnée, et de faire à l'extrémité de chacune des dites rues ainsi prolongées, et en dehors de la levée, une plate-forme ayant douze pieds de longueur et une largeur égale à celle de la rue ainsi prolongée, avec une rampe en pente douce de chaque côté. Et les dits donateurs s'obligent par les présentes à commencer immédiatement tous les dits travaux à partir de la date du présente acte, et ce de la manière suivante, savoir: Les travaux de la réparation, augmentation et revêtement de la levée sus-mentionnée, tels qu'ils sont décrits ci-dessus, à partir de la borne inférieure du faubourg Ste Marie, en remontant, en sorte qu'ils soient continués sans interruption tant que la crue du fleuve n'y mettra pas d'obstacle, et qu'ils soient parachevés dans le terme de deux années à partir de la date du présent acte; et les travaux nécessaires pour le prolongement et le remblai des rues du dit faubor'g, à partir de la rue des Chapitoulas jusqu'à la levée neuve, en sorte qu'ils soient parachevés et que les dits prolongemens de rues soient practicables pour les voitures et charettes, au plus tard, pour le premier janvier mil huit cent vingt et un. Il est convenu entre toutes les parties que tous les travaux ci-dessus décrits s'exécuteront sous la direction et approbation du voyer de la ville, et que faute par les dits donateurs de commencer les dits travaux dans la quinzaine de la date du présent acte, le maire et le conseil de ville auront le droit de faire les dits travaux aux frais et dépens des dits donateurs, et de la manière que les dits maire et conseil de ville le jugeront convenable, et qu'en outre ils pourront faire saisir et ven-

dre les terrains des dits donateurs ci-après affectés et hypothéqués pour le paiement des dits travaux; il est de plus convenu que jusqu'à ce que les rues susdites soient remblayées et exhaussées convenablement, et jusqu'à ce que les travaux de la levée soient parachevés, le conseil de ville donnera ses ordres pour interdire au public de prendre de la terre sur aucune partie de la batture ainsi donnée, excepté dans l'espace contenu entre une ligne correspondante au prolongement de la rue Girod et la borne de la propriété de M. William W. Montgomery, et pour que le voyer de la ville veille à ce que la dite terre soit enlevée par couches égales; et il est enfin convenu qu'aussitôt après le parchèvement des dits travaux, et la réception d'iceux par le voyer de la ville, l'entretien et la réparation de la levée, des rues, plates-formes et rampes ci-dessus mentionnés seront à la charge des maire, aldermen et habitans de la Nouvelle Orléans.

581 Et toujours, en considération de la présente donation, et des avantages qui peuvent en résulter pour toutes les parties, les dits donateurs s'obligent par les présentes à détruire ou faire détruire, à leurs frais et dépens, dans le terme d'un mois à partir de la date du présent acte, toutes les bâtisses ou autres constructions en bois qui existent actuellement sur la batture du faubourg Ste. Marie, et à en faire emporter tous les matériaux; comme aussi ils s'interdisent par les présentes, et tant pour eux-mêmes que pour leurs héritiers ou ayans-causes, de pouvoir élever aucunes maisons ou édifices sur la dite batture qu'autant que les murs d'iceux seront en briques ou en pierres et qu'ils seront couverts en tuiles ou autres matières incombustibles, à peine en cas de contravention à la présente clause de voir les dits maisons et édifices qui seraient construits différe'ment détruits à leurs frais et dépens. Et les dits maire, aldermen et habitans de la Nouvelle Orléans, représentés comme il est dit ci-dessus, s'engagent par les présentes à faire construire une halle pour servir de marché public, laquelle sera placée dans le faubourg Ste. Marie, et ce pour et en considération d'une somme de trois cents piastres que les dits donateurs s'obligent par les présentes de payer à la corporation de la Nouvelle Orléans par chaque terrain de trente pieds de face à la levée neuve qu'ils possédent sur la batture du faubourg Ste. Marie, sans égard pour la profondeur des dits terrains, et ce en leurs billets respectifs à l'ordre du maire de la Nouvelle Orléans, à un et deux ans de terme, à compter de la date du présente acte, en fournissant chacun en ce qui les concerne une hypothèque spéciale sur les terrains qui leur appartiennent respectivement sur la dite batture, et ce pour sureté du paiement des susdits billets à leur échéance; et dans le cas où la somme qui proviendra des dits paiemens serait plus que suffisante pour faire face aux frais de construction de la dite halle, les maire, aldermen et habitans de la Nouvelle Orléans, représentés comme il est dit ci-dessus, s'obligent par les présentes à employer cet excédant à subvenir aux frais de construction d'une autre halle pour servir de marché, laquelle sera placée au faubourg Marigny.

Et en exécution des présentes conventions les dit donateurs *ont* immédiatement fournis et délivré, en présence de nous, notaire, et des témoins soussignés, à l'honorable Joseph Roffignac, qui le reconnaît, leurs billets respectifs, en date de ce jour, et à l'ordre du dit Joseph Roffignac, maire de la Nouvelle Orléans, pour les terrains qu'ils possédent respectivement sur la batture du faubourg Ste. Marie, conformément au plan ci-annexé, tous lesquels billets *ont* été paraphés "ne varietur" pour constater leur rapport avec le présent acte, et *ont* été fournis de la manière suivante, savoir: Deux billets souscrits par le sieur

Edward Livingston, sous la date et ordre que dessus, l'un de la somme de cinq mille quatre cent quatre-vingt-trois piastres trente-trois cents et un tiers, payable à un an de date, et l'autre de pareille somme de cinq mille quatre cent quatre-vingt-trois piastres trente-trois cents et un tiers, payable à deux ans de date, faisant ensemble celle de dix mille neuf cent soixante-six piastres soixante-six cents deux tiers; deux billets souscrits par le sieur Jean Gravier, même ordre et date, l'un de la somme de douze cent quarante piastres, payable à un an de date, et l'autre de pareille somme de douze cent quarante piastres, payable à *un an de date, et l'autre de pareille somme de douze cent quarante piastres, payable à* deux ans de date, faisant ensemble celle de deux mille quatre cent quatre-vingt piastres; deux billets souscrits par Louis Barthélemy Macarty, même date et ordre, l'un de la somme de cent cinquante-cinq piastres, payable à un an de date, et l'autre de pareille somme cent cinquante-cinq piastres, payable
582 *à un an de date, et l'autre de pareille de somme cinquante-cinq piastres, payable à* deux ans de date, fesant ensemble celle de trois cent dix piastres; deux billets souscrits par le sieur Christophe Toledano, même date et ordre, l'un de la somme de cent treize piastres soixante et quinze cents, payable à un an de date, et l'autre de pareille somme de cent treize piastres soixante et quinze cents, payable à deux ans de date, fesant ensemble celle de deux cent vingt-sept piastres cinquante cents; deux billets souscrits par le sieur Vincent Rillieux, même date et ordre, l'un de la somme de deux cent soixante et douze piastres quatre-vingt-onze cents deux tiers, payable à un an de date, et l'autre de pareille somme de deux cent soixante et douze piastres quatre-vingt-onze cents deux tiers, payable à deux ans de date, faisant ensemble celle de cinq cent quarante-cinq piastres quatre-vingt-trois cents un tiers; deux billets souscrits par le sieur Toussaint Mossy, même date et ordre, l'un de la somme de cent trente-six piastres vingt-cinq cents, payable à un an de date, et l'autre de pareille somme de cent trente-six piastres vingt-cinq cents, payable à deux ans, fesant ensemble celle de deux cent soixante-douze piastres cinquante cents; deux billets souscrits par le sieur Elie Victor Jourdain, même date et ordre, l'un de la somme de cent quatre-vingt-une piastres vingt-cinq cents, payable à un an de date, et l'autre de pareille somme de *cinq* quatre-vingt-une piastres vingt-cinq cents, payable à deux ans de date, fesant ensemble celle de trois cent soixante-deux piastres cinquante cents; deux billets souscrits par Messieurs Winter & McCall, et Linton et Wilkins, même date et ordre, l'un de la somme de deux cent soixante et douze piastres quatre-vingt-onze cents deux tiers, payable à un an de date, et l'autre de pareille somme de deux cent soixante et douze piastres quatre-vingt-onze cents deux tiers, payable à deux ans de date, fesant ensemble celle de cinq cent quarante-cinq piastres quatre-vingt-trois cents un tiers; deux billets souscrits par le sieur Alexandre Labranche, même date et ordre, l'un de la somme de deux cent soixante et douze piastres, quatre-vingt-onze cents deux tiers, payable à un an de date, et l'autre de pareille somme de deux cent soixante et douze piastres quatre-vingt et onze cents deux tiers, payable à deux ans de date, faisant ensemble celle de cinq cent quatre-vingt-trois cents un tiers; deux billets souscrits par le sieur James Pitot, au nom et comme fondé de la procuration de Jeanne Bordier, femme Petit, de Bertrand Gravier, jeune, et de Jeanne Gravier, même date et ordre, l'un de la somme de quatre mille huit cent quarante-huit piastres soixante-quinze cents, payable à un an de date, et l'autre de pareille somme de quatre mille huit cent quarante-huit piastres soixante-quinze cents, payable à deux

ans de date, fesant ensemble celle de neuf mille six cent quatre-vingt-dix-sept piastres cinquante cents; deux billets souscrits par Barthélemy Lafon, au nom et comme exécuteur testamentaire de feu Pierre de la Bigarre, même date et ordre, l'un de la somme de quatre cent soixante et dix piastres, payable à un an de date, et l'autre de pareille somme de quatre cent soixante et dix piastres, payable à deux ans de date, fesant ensemble celle de neuf cent quarante piastres; tous lesquels billets l'honorable Joseph Roffignac, ès qualité, donne décharge aux sieurs donateurs payés qu'ils soient à leurs échéance. Et quand à la dite Manette St. Amand, femme de couleur libre, comparante et donatrice au présente acte, elle a préféré pour se dispenser de fournir ses deux billets de cent cinquante-cinq piastres chaque, à un et deux ans de terme, ainsi que dessus, et éviter de donner une hypothèque spécia'e sur le terrain numéro douze au plan ci-annexé, de trente-un pieds de face sur la profondeur figurée au dit plan, qu'ille possède sur la dite batture, de
583 payer immédiatement sa quote part, s'élevant à trois cent dix piastres, entre les mains de l'honorable Joseph Roffignac, ès qualité, qui reconnait avoir reçu la dite somme de trois cent dix piastres pour les deux billets de cent cinquante-cinq piastres chaque, à un et deux ans de date, que la dite Manette St. Amand aurait autrement eu à fournir, déclarant le dit sieur Joseph Roffignac donner par les présentes à la dite Manette St. Amand bonne et valable quittance et décharge de sa dite quote part de troix cent dix piastres. Et pour sureté de paiement des dits billets à leur échéance respectives, les dits sieurs donateurs déclarent donner, chacun en droit soi et en ce qui le concerne, hypothèque spéciale aux maire, aldermen et habitans de la Nouvelle Orléans sur les terrains suivans, savoir:

Le sieur Edward Livingston a hypothéqué ainsi que dessus: 1. Le terrain numéro un au plan ci-annexé, de cent quarante-deux pieds huit pouce des sur la profondeur figurée au dit plan; 2d, le terrain numéro vingt au dit plan, ayant deux cent dix pieds de face sur la profondeur comme il est ci-dessus; 3d, le terrain numéro vingt et un au dit plan, ayant deux cent quarante-deux pieds de face sur la profondeur ainsi qu'il a été dit; 4th, le terrain numéro vingt-deux au susdit plan, ayant deux cent vingt pieds de face sur la profondeur comme il a été dit; 5th, les trois quarts du terrain numéro vingt-quatre au dit plan, qu'il possède par indivis avec les héritiers De la Bigarre, le dit terrain ayant trois cent trente-deux pieds de face sur la profondeur telle qu'elle a été sus-énoncée; et 6th, enfin, les trois quarts du terrain numéro vingt-cinq du dit plan, qu'il possède par indivis avec les mêmes héritiers, lequel terrain a quarante-quatre pieds de face sur la profondeur comme il est dit ci-dessus; le tout pour sureté du paiement de la somme de dix mille neuf cent soixante-six piastres soixante-six cents deux tiers, montant des billets ci-dessus par lui souscrits comme il a été dit. Le sieur Jean Gravier a hypothéqué de la même manière le quart du terrain numéro vingt-trois figurée au susdit plan, qu'il possède par indivis avec les héritiers Gravier, le dit terrain ayant quatre cent quatre-vingt-seize pieds de face sur une profondeur telle qu'elle est figurée sur le dit plan, et ce pour sureté du paiement de la somme de douze cent quarante piastres, montant des billets par lui souscrits comme il est dit ci-dessus; le sieur Louis Barthélemy Macarty a hypothéqué de la même manière le terrain numéro seize au dit plan, ayant trente et un pieds de face sur la profondeur figurée au dit plan, et ce pour sureté de la somme de trois cent dix piastres, montant des billets souscrits par lui comme il est dit ci-dessus; le sieur Christophe Toledano a hypothéqué comme ci-dessus le terrain numéro dix-huit au dit plan, ayant le dit terrain

vingt-deux pieds neuf pouces de face sur la profondeur figurée au dit plan, et ce pour sureté du paiement de deux cent vingt-sept piastres cinquante cents, montant des billets par lui souscrits comme dessus; le sieur Vincent Rilleux a hypothéqué de même le terrain numéro dix du dit plan, ayant le dit terrain cinquante-quatre pieds sept pouces de face sur la profondeur figurée au dit plan, pour sureté du paiement des cinq cent quarante-cinq piastres quatre-vingt-trois cents et un tiers de billets par lui souscrits comme dessus; le sieur Toussaint Mossy a hypothéqué de la même manière le terrain numéro neuf du dit plan, mesurant vingt-sept pieds trois pouces de face, profondeur figurée au plan, pour sureté du paiement des deux cent soixante-douze piastres et cinquante cents de billets souscrits par lui comme dessus; le sieur Elie Victor Jourdain a hypothéqué de la même manière le terrain numéro quatorze du dit plan, mesurant trente-six pieds trois pouces de face sur la profondeur figurée au plan, pour sureté du paiement des trois cent soixante-deux piastre cinquante cents de billets souscrits par lui comme dessus; les sieurs McCall
584 et Linton, au nom de leur société de Winter et McCall, et de Wilkins et Linton, ont hypothéqué le terrain numéro six du dit plan, mesurant cinquante-quatre pieds sept pouces de face, profondeur figurée au plan, pour sureté du paiement des cinq cent quarante-cinq piastres quatre-vingt-trois cents un tiers de billets par eux souscrits comme dessus; le sieur Étienne Mazureau, fondé de pouvoirs du sieur Alexandre Labranche, a hypothéqué de la même manière le terrain numéro cinq au dit plan, mesurant cinquante-quatre pieds sept pouces de face sur la profondeur figurée au dit plan, pour sureté du paiement des cinq cent quarante-cinq piastres quatre-vingt-trois cents un tiers de billets souscrits par le sieur Alexandre Labranch, ainsi qu'il a été dit; le sieur James Pitot, ès qualité, a hypothéqué de la même manière les terrains numéros deux, quatre, six, huit, onze, treize, quinze, dix-sept, dix-neuf, et les trois quarts du terrain numéro vingt-trois au dit plan, mesurant ensemble huit cent quarante-cinq pieds neuf pouces sur la profondeur figurée au dit plan, pour sureté du paiement de neuf mille six cents quatre-vingt-dix-sept piastres cinquante cents de billets par lui souscrits, en sa dite qualité, comme il est dit ci-dessus; et le dit sieur Barthélemi Lafon, ès qualité, a hypothéqué de la même manière le quart des terrains numéros vingt-quatre et vingt-cinq au dit plan, possédés par indivis par les héritiers De la Bigarre et Mr. Livingston, ayant ensemble les dites portions de terrains quatre-vingt-quatorze pieds de face sur la profondeur figurée au plan susdit, et ce pour sureté du paiement de neuf cent quarante piastres souscrits par le dit sieur Lafon, en sa qualité comme il a été dit.

Et pour l'inscription des présents hypothèques, et pour l'insinuation de la donation contenue au présent acte, tous pouvoirs nécessaires sont donnés au porteur d'une expédition des présentes.

Fait et passé en mon étude, les jour, mois et an que dessus, en présence des sieurs Jean Baptiste Desdunes, fils, et Jean Bte. Donation Au-

gustin, témoins requis et domiciles, qui ainsi que les comparans ont signé avec nous, notaire, après lecture faite.

(Orig'nal signed:)

EDW. LIVINGSTON.
E. MAZUREAU,
Pour JN. GRAVIER.
A'DRE LABRANCHE.
T. MOSSY.
TOLEDANO.
L. B. MACARTY.
LAFON,
Exécuteur Testamentaire de Pierre de la Bigarre.
MANETTE ST. AMAND.
J. ROFFIGNAC, *Maire.*
VINCENT RILLIEUX.
J. PITOT,
Fondé de Pouvoir des H'ers Gravier.
WINTER & McCALL.
WILKINS & LINTON.
E. V. JOURDAIN.
J. B. DESDUNES, FILS.
J. B. D. AUGUSTIN.
H. LAVERGNE, *Not. Pub.*

STATE OF LOUISIANA,
Parish of Orleans:

I, Andrew Hero, jr., a notary public and the custodian of notarial records in and for the parish and city of New Orleans, commissioned and qualified, do certify the foregoing as being a true and correct copy of the original act extant in the records of Hugues Lavergne, formerly a notary public in this city, and whose records I hold as custodian thereof.

585

As attest my hand and seal, at New Orleans, as custodian as aforesaid, this 13th day of October, A. D. 1870.

[SEAL.] (Signed) ANDREW HERO, JR.,
Custodian of Notarial Records.

Translation of Document A E.

N. O., M. AND CHAT. R. R. CO. vs. CITY OF NEW ORLEANS ET ALS. } No. 4.

To the honorable the eighth district court for the parish of Orleans:

The undersigned, appointed translator in the above-entitled case, to translate Document A E, filed Jan. 10, 1871, and purporting to be an act of donation, begs leave to submit the annexed as a true and correct translation of the aforesaid document, made in pursuance of the order appointing him as translator herein; a copy of which order, together with his oath, are thereto annexed for reference.

And the undersigned prays that the said translation be accepted and approved by the court.

Respectfully,

A. L. VILLERÉ.

Oath of translator.

State of Louisiana, eighth district court, parish of Orleans.

N. O., M. AND C. R. R. Co. vs. CITY OF NEW ORLEANS ET ALS. } No. 4.

Before me, deputy clerk of the eighth district court for the parish of Orleans, personally came and appeared A. L. Villeré, who solemnly swears that he will well and faithfully perform all and singular the duties of translator under the order appointing him as such, dated February 20, 1871, a copy of which is hereto annexed. So help me God.

(Signed) A. L. VILLERÉ.

Sworn to and subscribed before me, New Orleans, February , 1871.

(Signed) ROBERT LYNNE,
Deputy Clerk.

586 *Order of appointment.*

State of Louisiana, eighth district court, parish of Orleans.

MONDAY, *the 20th day of February*, 1871.

Present, the honorable Henry C. Dibble, judge.

N. O., M. AND CHAT. R. R. Co. vs. CITY OF NEW ORLEANS ET ALS. } No. 4.

It is ordered by the court, that A J. Villeré, esq., be appointed as a translator herein, to translate "Document A. E," filed Jan. 10th, 1871, written in the French language, said document purporting to be "An act of donation by the owners of the batture in front of faubourg St. Marie, to the mayor and aldermen and inhabitants of the city of New Orleans, and that said Villeré be notified to appear and qualify as such.

A true extract from the minutes.

ROBERT LYNNE,
Deputy Clerk.

Translation of Document A E.

In the city of New Orleans, in the State of Louisiana, on the twentieth day of September, one thousand eight hundred and twenty, and the forty-fifth of the Independence of the United States of America, before me, Hughes Lavergne, notary public, duly commissioned in and for the city and parish of New Orleans, therein residing, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Messrs. Edouard Livingston, Jean Gravier, Louis Barthelemi Macarty, Christophe Toledano, Vincent Rillieux, Toussaint Mossy, Elie Victor Jourdain, Manette St. Armand, free woman of color and of lawful age, Henry McCall, herein acting in his own behalf and on behalf of Joseph J. Winter, his partner; Etienne Mazureau, as agent and attorney in fact of Alexandre Labranche, under power of attorney duly exhibited to the undersigned notary; the honorable

James Pitot, herein acting in the name and on behalf of Bertrand Gravier, jr., and of Miss Jeanne Gravier, daughter of full age, and also in the name and on behalf of Mrs. Jeanne Bordier, wife of Jean Mathieu Helant Petit, all residing in France, by virtue of powers of attorney and supplementary power of attorney which the said Mistress Petit had executed in favor of Nicholas Alphonse Desmare by act before Deschamps and his colleague notaries at Bordeaux, under date of the sixteenth day of July, eighteen hundred and seventeen, and twenty-fifth day of September, eighteen hundred and eighteen; and of that which the said Bertrand Gravier, jr., and Miss Jeanne Gravier had executed in favor of the honorable Pierre Derbigny, by act passed before Bagnaire and his colleague notaries at Bergerac, on the eighteenth of June, one thousand eight hundred and seventeen; all of which powers of attorney are deposited in the office of Michel de Armas, notary public in this city, and have been transferred to the said Mr. James Pitot by the said Messrs. Desmare and Derbigny by acts passed under date of the fifth and tenth of June last, and deposited in the same office; Barthelemi Lafon, in the name and as testamentary executor of the late Pierre Delabigarre, and Mr. John W. Oddie, by virtue of a gen-
587 eral and special power of attorney of Mrs. Margaret, widow of the late Pierre Delabigarre, and of Maria Louisa Delabigarre, widow of P. Hewart, and of Miss Amarylis Laura Delabigarre; all of which appearers reside in New Orleans:

On one part:

And the honorable Joseph Rouffignac, mayor of the city of New Orleans, therein residing, acting and stipulating in behalf and in the name of the mayor, aldermen, and inhabitants of New Orleans, by virtue of the proceedings of the city council, under date of the thirty-first of August last, of which an authenticated copy is hereto annexed.

Which said first appearers, whether in their own name or in the capacities which they hold, and as actual owners of the batture in front of the suburb St. Mary, or representing said owners, wishing to favor the public in the use of the river side which lies in front of said batture, and to facilitate the communication between the streets which will terminate at that place, have, by these presents, made a donation inter vivos and irrevocable and in the best form in which a donation may be valid, to the mayor, aldermen, and inhabitants of New Orleans, herein represented by the honorable Joseph Roffignac, mayor of the city, now present, and accepting and stipulating for the said mayor, aldermen and inhabitants, by virtue of the authority in him vested for that purpose by the city council in the proceedings of thirty-first of August ultimo, of which a true copy is hereto annexed, of all the rights which the said donors have or may have, respectively:

1st. In all that portion of the said batture or alluvion which exists from the lower limit of the property of Mr. William W. Montgomery, and extending downwards to the limit between the city and the suburb St. Mary, and taking from the foot of the new levee exteriorly to the marginal line of the river when at its lowest stage.

2d. In the new levee which has been constructed on the whole length of the said portion of batture, as well as the ground on which it is built, such as said levee will be when it shall have been repaired, increased, and braced with wood by the said donors, as hereinafter agreed.

3d. In the ground necessary for the extension of the streets of said suburb up to the new levee, which shall be opened and graded and

laid with a wharf and slope on the river at the expense of said donors, as it is hereinafter prescribed by this act; and,

4th. On the ground of Tchoupitoulas street on the whole length of said suburb, allowing said street sixty feet in width, including the sidewalks or banquettes; all of which lots so donated are not encumbered by any mortgages on the part of said donors, as appears from the certificate of the recorder of this city, dated this day, excepting the following, to wit:

Thirty thousand eight hundred and eighty-nine dollars of mortgage given by Edward Livingston in the following manner, to wit:

Twelve thousand eight hundred and twenty dollars in favor of James Johnston, on the lot number two on the plan hereto annexed, certified by Livingston and paraphed ne varietur by the undersigned notary; fourteen thousand three hundred dollars in favor of Messrs. Vincent Nolte and Laurent Millaudon, on the three lots forming the corner of Notre Dame street and of the new levee, and bearing the numbers eighteen, nineteen, and twenty on said plan.

Three thousand five hundred dollars in favor of Joseph Segura on the lot number eleven. One thousand two hundred and sixty-nine dollars in favor of James Ramsay, on lot number thirteen of said
588 plan, which said lots do not encroach in any manner on the ground and extensions of streets which are subject to this donation, as appears by the said plan. Furthermore, nine hundred and eighty-five dollars sixty-eight cents and three-fourths of judicial mortgages against Mr. Gravier, resulting from several judgments in favor of the following named persons, to wit:

John Bossier, for four hundred and seventy-four dollars six cents and one-fourth, with interest; and Joseph Taboire, for the sum of two hundred and forty-five dollars eighty-one cents and one-fourth and interest, and two hundred and sixty-five dollars eighty-one cents and one-fourth and interest.

Furthermore, two thousand and sixty-seven dollars of tacit mortgages against John Linton, as surety on the bond executed in the probate court by Stephen Duncan, as curator of the succession of Hamilton Blakony.

And finally, fifty thousand dollars of mortgages granted by Pierce Delabigarre in favor of Jean Gravier, to secure the sale of the batture.

The present donation is made with the express condition—without which it would not have taken place—to wit:

That all lots of ground which are the object of the present donation will remain inalienable and guaranteed against all seizures, either for debts or otherwise, in the hands of the corporation of New Orleans, which will never, under any pretext, as herein agreed to by the mayor, aldermen and inhabitants of New Orleans duly represented herein, be sold, exchanged, donated or disposed of, in whole or any part thereof, in any manner whatever, or be used for other public purposes than those for which they are naturally destinated, nor to erect thereon any building or construction, with the exception, however, of the only case in which the city council would deem it proper to the public interest, to authorize the erection of a fire-engine house on such portion of the batture which the city council shall select for that purpose. It is hereby agreed, nevertheless, that this restriction from erecting buildings or constructions will not be construed in such a manner as to prohibit the mayor and city council of New Orleans from establishing, or causing to be established, piers or wharves, to facilitate commerce, when the said mayor and city council will deem it proper.

And in consideration of this present donation and the advantages which may derive therefrom for all parties, the said donors hereby jointly obligate themselves, by these presents, in favor of the said donees, and this by them accepted, to repair and increase the new levee thus donated on its whole length, so that it shall have sixty feet at the top; which said levee shall be constructed in the direction of the fellow lines on the plan hereto annexed and designated by the letters A, B, C, D, which said plan shall be paraphed ne varietur; and the said levee shall be covered with cypress wood, in the same manner as that part of the levee lying in front of the city between Conti and Bienville streets. And the donors further obligate themselves respectively, in favor of the donees as accepted by them, to open and raise, at their expense, all the streets of the said suburb St. Mary which are to be extended from Tchoupitoulas street to the new levee, as donated, and to erect at the extremity of each of said streets thus extended, and outside of the levee thus given, a platform having twelve feet in length and a width equal to that of the street so extended, with an easy slope on each side; and the said donors bind themselves, by these presents, to begin immediately all the said works, from the date of the present act, and this in the following manner, to wit:

The works for the repairs, increase and covering of the levee
589 above-mentioned, such as they are described above, to extend from the lower limit of the suburb St. Mary, going up in such a manner that they be continued without interruption, as long as not obstructed by the rising of the river, and that they be completed in the term of two years from the date of the present act; and the necessary works for the filling up of the streets of the said suburb, from Tchoupitoulas street as far as the new levee, so that they be completed, and that the said extensions be practicable for carriages and carts, at the latest, by the first of January, eighteen hundred and twenty-one. It is agreed between all the parties that all the works above-described will be executed under the direction and approbation of the surveyor of the city, and in default of said donors beginning the said works within fifteen days from the date of the present act, the mayor and the city council shall have the right to have *and* the works executed at the charges and expenses of the said donors, *said* in the manner which the said mayor and city council will deem proper; and that further they will be empowered to seize and sell the lots of the said donors, hereinafter affected and hypothecated, for the payment of said works. It is further agreed that until the streets aforesaid be satisfactorily filled and raised, and until the works of the levee be completed, the city council shall issue orders to enjoin the public from taking any dirt on any portion of the batture thus donated, with the exception of the space lying between a line corresponding with the extension of Girod street and the limit of the property of William W. Montgomery, and that the city surveyor shall see that the said dirt be taken in equal portions. And it is finally agreed that immediately after the completion of said works and the acceptance of the same by the city surveyor, the maintenance and repair of the levee, platforms, streets and slopes herein above-mentioned shall be at the expense of the mayor, aldermen and inhabitants of New Orleans; and furthermore, in consideration of the present donation and the advantages which may derive therefrom for all parties, the said donors obligate themselves, by these presents, to demolish and cause to be demolished, at their charges and expenses, within one month from the date of the present act, all buildings or other wooden constructions which actually exist on the batture of suburb

St. Mary, and to cause all the materials thereof to be carried away; and they are enjoined themselves, their heirs and assigns, by these presents, from having the power of erecting any house or building on the said batture unless the walls of said buildings shall be of bricks or stones, and that they shall be roofed with tiles or other incombustible materials, under penalty, if there be any contravention of this present clause, to have the said houses or buildings which would be differently constructed torn down, at their charges and expenses.

And the said mayor, aldermen and inhabitants of New Orleans, represented as hereinabove set forth, obligate themselves, by these presents, to erect a market for the use of public marketing, which shall be situated in the suburb St. Mary; and this for and in consideration of the sum of three hundred dollars, which the said donors bind themselves by these presents to pay to the corporation of New Orleans for each lot of thirty feet front which they own on the batture of the suburb St. Mary, without any regard for the depth of said lots, and this in their respective notes, to the order of the mayor of the city of New Orleans, at one and two years from the date of the present act, executing each one of them respectively a special mortgage on the lots to them belonging respectively, on the said batture, and this for the surety of the payment of the aforesaid notes at their maturity; and in case the
590 sum accruing from said payments be more than sufficient to cover the expenses of the building of the said market, the mayor, aldermen and inhabitants of New Orleans, represented as aforesaid, bind themselves, by these presents, to use the exceeding amount towards defraying the expenses of the building of another market, to be used for public marketing, which shall be situated in the suburb Marigny.

And in execution of the present conventions, the said donors have immediately given and delivered in the presence of me, notary, and the undersigned witnesses, to the honorable Joseph Roffignac, who hereby acknowledges receipt thereof, their respective notes dated this day and to the order of the said Joseph Roffignac, mayor of New Orleans, for the lots which they own respectively on the batture of the faubourg St. Mary, in conformity with the plan hereto annexed, which notes were paraphed ne varietur, to identify them with the present act, and have been given in the following manner:

Two notes drawn by Edward Livingston under date and to the order above mentioned, one for the sum of five thousand four hundred and eighty-three dollars thirty-three cents and one-third, payable one year after date, and the other for an equal amount of five thousand four hundred and eighty-three dollars thirty-three cents and one-third, payable two years after date, amounting together to the sum of ten thousand nine hundred and sixty-six dollars sixty-six cents and two-thirds.

Two notes drawn by Jean Gravier of the same date and to the same order, one for the sum of twelve hundred and forty dollars, payable one year after date, and the other for an equal sum of twelve hundred and forty dollars, payable two years after date; amounting together to the sum of two thousand four hundred and eighty dollars.

Two notes drawn by Louis Barthelemy Macarty of the same date and to the same order, one for the sum of one hundred and fifty-five dollars, payable one year after date, and the other for an equal sum of one hundred and fifty dollars, payable two years after date; amounting together to the sum of three hundred and ten dollars.

Two notes drawn by the said Christophe Toledano of the same date and to the same order, one for the sum of one hundred and thirteen dollars seventy-five cents, payable one year after date, and the other for

an equal sum of one hundred and thirteen dollars seventy-five cents, payable two years after date; amounting together to the sum of one hundred and eighty-seven dollars and fifty cents.

Two notes drawn by the said Vincent Riellieux of the same date and to the same order, one for the sum of two hundred and seventy-two dollars ninety-one cents and two-thirds, payable one year after date, and the other for an equal sum of two hundred and seventy-two dollars ninety-one cents and two-thirds, payable two years after date; amounting together to the sum of five hundred and forty-five dollars eighty-three cents and one-third.

Two notes drawn by said Toussaint Mossy of the same date and to the same order, one for the sum of one hundred and thirty-six dollars and twenty-five cents, payable one year after date, and the other for an equal sum of one hundred and thirty-six dollars and twenty-five cents, payable two years after date; amounting together to the sum of two hundred and seventy-two dollars and fifty cents.

Two notes drawn by the said Elie Victor Jourdain of the same date and to the same order, one for the sum of one hundred and eighty-one dollars and twenty-five cents, payable one year after date, and the other for an equal sum of one hundred and eighty-one dollars and
591 twenty-five cents, payable two years after date; amounting together to the sum of three hundred and sixty-two dollars and fifty cents.

Two notes drawn by Messrs. Winter & McCall, and Linton & Wilkins, and of the same date and to the same order, one for the sum of two hundred and seventy-two dollars ninety-one cents and two-thirds, payable one year after date, and the other for an equal sum of two hundred and seventy-two dollars ninety-one cents and two-thirds, payable two years after date; amounting together to the sum of five hundred and forty-five dollars eighty-three cents and one-third.

Two notes drawn by said Alexander Labranche of the same date and to the same order, one for the sum of two hundred and seventy-two dollars ninety-one cents and two-thirds, payable one year after date, and the other for an equal sum of two hundred and seventy-two dollars ninety-one cents and two-thirds, payable two years after date; amounting together to the sum of five hundred and forty-five dollars eighty-three cents and one-third.

Two notes drawn by the said James Pitot, in the name and as agent and attorney in fact of Jeanne Bordier, wife Petit, of Bertrand Gravier, junior, and of Jeanne Gravier of the same date and to the same order, one for the sum of four thousand four hundred and forty-eight dollars and seventy-five cents, payable one year after date, and the other for an equal sum of four thousand four hundred and forty-eight dollars and seventy-five cents, payable two years after date; amounting together to the sum of nine thousand six hundred and ninety-seven dollars and fifty cents.

Two notes drawn by Barthelemy Lafon, in the name and as testamentary executor of late Pierre Delabigarre of the same date and to the same order, one for the sum of four hundred and seventy dollars, payable one year after date, and the other for an equal sum of four hundred and seventy dollars, payable two years after date; amounting together to the sum of nine hundred and forty dollars.

For all which notes the honorable Joseph Roffignac, in his official capacities, gives discharge to the said donors, provided the same be paid at their maturity.

And as to the said Manette St. Amand, free woman of color, herein

appearing and donor in the present act, she preferred to exempt herself from furnishing her two notes of one hundred and fifty-five dollars each at the term of one and two years as aforesaid, and to avoid giving a special mortgage on the lot number twelve on the plan hereto annexed and measuring thirty-one feet front and the depth specified on the said plan, which she possesses on the said batture, to pay immediately her respective share amounting to three hundred and ten dollars into the hands of the honorable Joseph Roffignac, in his official capacities, who acknowledges having received the said sum of three hundred and ten dollars for the two notes of one hundred and fifty-five dollars each, payable one and two years after date, that the said Manette St. Amand would have had otherwise to furnish; hereby declaring the said Joseph Roffignac to give by these presents to the said Manette St. Amand, good and valid discharge for said respective share of three hundred and ten dollars; and to secure the payment of the said notes at their respective maturity, the said donors declare giving in their own right, respectively, a special mortgage in favor of the mayor, aldermen and inhabitants of New Orleans on the following lots, to wit:

The said Edward Livingston has mortgaged as above mentioned—

1. The lot No. one of the plan hereto annexed, having one hun-
592 dred and forty-two feet eight inches front on the depth specified on the said plan;

2d. The lot number 20 of said plan, having two hundred and ten feet front on the depth aforesaid.

3d. The lot No. twenty-one of the said plan, having two hundred and forty-two feet front on the depth aforesaid.

4th. The lot number twenty-two of the aforesaid plan, having two hundred and twenty feet front on the depth aforesaid.

5th. The three-fourths of lot number twenty-four of the said plan, which he possesses in common with the heirs of Labigarre, the said lot having three hundred and thirty-two feet front on the depth above-mentioned; and,

6th. Finally, the three-fourths of lot number twenty-five of the said plan, which he possesses in common with the same heirs, which lot has forty-four feet front on the depth aforesaid. The whole to secure the payment of ten thousand nine hundred and sixty-six dollars sixty-six cents and two-thirds, amount of the notes above-mentioned, drawn by him as aforesaid.

The said Jean Gravier has mortgaged in the same manner the one-fourth of the lot number twenty-three, designated on the aforesaid plan, which he possesses in common with the heirs of Gravier, the said lot having four hundred and ninety-six feet front on a depth as specified on the aforesaid plan; and this to secure the payment of the sum of one thousand two hundred and forty dollars, amount of the notes drawn by him as aforesaid.

The said Louis Barthelemy Macarty, has mortgaged in the same manner the lot number sixteen of the said plan, having thirty-one feet front on the depth specified on said plan; and this to secure the sum of three hundred and ten dollars, amount of the notes drawn by him as aforesaid.

The said Christophe Toledano has mortgaged, as aforesaid, the lot number eighteen of the said plan, the said lot having twenty-two feet nine inches front on the depth specified on said plan, and this to secure the payment of two hundred and twenty-seven dollars and fifty cents, amount of the notes drawn by him as aforesaid.

The said Vincent Rillieux has mortgaged likewise, the lot number

ten of the said plan, having fifty-four feet seven inches front on the depth specified on said plan, to secure the payment of five hundred and forty-five dollars eighty-three cents and one-third, of notes drawn by him as aforesaid.

The said Toussaint Mossy has mortgaged in the same manner, the lot number nine of the said plan, measuring twenty-seven feet three inches front on the depth specified on said plan, to secure the payment of the two hundred and seventy-two dollars and fifty cents of notes drawn by him as aforesaid.

The said Elie Victor Jourdain has mortgaged in the manner, the lot number fourteen of the said plan, measuring thirty-six feet three inches on the specified depth on the plan, to secure the payment of three hundred and sixty-two dollars and fifty cents of notes drawn by him as aforesaid.

The said McCall & Linton, in the name of their partnership of Winter & McCall, and of Wilkins & Linton, have mortgaged the lot number six of the said plan, measuring fifty-four feet seven inches front on a depth specified on the said plan, to secure the payment of the five hundred and forty-five dollars eighty-three cents and one-third of notes drawn by them as aforesaid.

593 The said Etienne Mazureau, as agent and attorney in fact of the said Alexandre Labranche, has mortgaged, in the same manner, the lot number five of the said plan, measuring fifty-four feet seven inches front on the depth specified on the said plan, to secure the payment of the five hundred and forty-five dollars eighty-three cents and one-third of notes drawn by the said Alexandre Labranche as aforesaid.

The said James Pitot, in his official capacities, has mortgaged, in the same manner, the lots numbers two, four, six, eight, eleven, thirteen, fifteen, seventeen, nineteen and three-fourths of the lot number twenty-three of said plan, measuring together eight hundred and forty-five feet nine inches on the depth specified on said plan, to secure the payment of nine thousand six hundred and ninety-seven dollars fifty cents of notes drawn by him in his said capacities as above stated.

And the said Barthelemi Lafon, in his official capacities, has mortgaged in the same manner, the one-fourth of the lots number twenty-four and twenty-five of the said plan, owned in common by the heirs of Delabigarre and Livingston, the said portions of lots having together ninety-four feet front on the depth specified on the aforesaid plan, and this to secure the payment of nine hundred and forty dollars subscribed by the said Lafon in his aforesaid capacity.

And for the inscription of the present mortgages, and for the registry of the donation contained in the present act, all necessary powers are given to the bearer of a duly authenticated copy thereof.

Done and passed in my office on the day, month and year above-mentioned, in presence of Messrs. Jean Baptist Desdunes, jr., and Jean Bte. Donatien Augustin, witnesses, by me requested so to be, and residing

in this city, who, together with the said appearers and me, notary, have signed these presents; the whole after due reading thereof.

Original signed:

EDW. LIVINGSTON.
E. MAZUREAU.
For JEAN GRAVIER.
A'DRE LABRANCHE.
T. MOSSY.
TOLEDANO.
L. B. MACARTY.
LAFON.
Testamentary Executor of Pierre Delabigarre.
MANETTE ST. AMAND.
J. ROFFIGNAC, *Mayor.*
VINCENT RILLIEUX.
J. PITOT.
Agent and Attorney in fact of the heirs of Gravier.
WINTER & McCALL.
WILKINS & LINTON.
E. V. JOURDAIN.
J. B. DESDUNES (*Son*).
J. B. D. AUGUSTIN.
H. LAVERGNE, *Not. Pub.*

STATE OF LOUISIANA,
Parish of Orleans:

I, Andrew Hero, jr., a notary public, and the custodain of notarial records in and for the parish and city of New Orleans, duly commissioned and qualified, do certify the foregoing, as being a true
594 copy of the original act extant in the records of Hugues Lavergne, formerly a notary public in this city, and whose records I hold as custodian thereof.

As attest my hand and seal at New Orleans, as custodian aforesaid, this thirteenth day of October, A. D. eighteen hundred and seventy.

(Signed) ANDREW HERO, JR.,
Custodian of Notarial Records.

I certify that the foregoing is a true and correct translation of the document marked A E, filed January 10, 1871, in the eighth district court for the parish of Orleans, in the matter of New Orleans, Mobile and Chattanooga Railroad Company vs. The City of New Orleans, No. 19 of the docket of said court.

(Signed) A. L. VILLERE.

NEW ORLEANS, *February* 27, 1871.

Document A F: Compromise between municipality No. two and the owners of the batture in front thereof.—Filed January 10, 1871.

STATE OF LOUISIANA,
City of New Orleans:

Be it known, that this day, before me, Henry Breton Cenas, a notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared—

Alexander Brother, Henry Renshaw and Charles Dabney Yancey, of

the said city of New Orleans, composing the finance committee of the council of municipality number two of said city, and herein acting in their capacity as such, under the authority of a resolution of said council adopted on the seventeenth day of June instant, a duly certified copy whereof is hereunto annexed for reference, parties hereto of the first part.

And with them also came and appeared the persons hereinafter named, parties hereto of the second part, being the original parties, or the agents, heirs and legal representatives of the parties to a certain act, commonly called a donation, passed on the twentieth day of September, eighteen hundred and twenty, before Hugues Lavergne, then a notary public in this city, between the said original parties, as the actual possessors of the batture in front of the faubourg St. Marie, and the mayor, alderman and inhabitants of the city of New Orleans, which said act is now to be found in the office of Theodore O. Stark, a notary public in this city, the successor of William Christy, who was the successor of the said Lavergne, to wit—

First. Christophe Toledano, of this city, one of the original parties to said donation.

Second, Victor Roumage and Ambroise A. Pardo, of this city, testamentary executors of the late Louis B. Macarty, late of this city, deceased, and herein acting in their capacity as such.

Third. The following, comprising all the heirs and legal representatives of the late Elie Victor Jourdain, late of this city, deceased, to wit:

1st. John B. V. Jourdain, of lawful age, son of the said deceased;

2d. Mistress Leonide Jourdain, daughter of the said deceased, and wife of Adelard Blondeau, of this city, she being of lawful age, and herein assisted by her said husband;

3d. Elie Farram Lavillebeuvre, son of Jean U. Lavillebeuvre
595 by his late wife, the Mistress Elizabeth Chandée Jourdain, daughter of the said deceased, the said appearer being of lawful age;

4th. Mistress Aspasie Lavillebeuvre, daughter of the said Jean U. Lavillebeuvre and his said wife, and now wife of Samuel James Peters, junior, she being of lawful age, and herein assisted and authorized by her said husband;

5th. Mistress Stephanie Josephine Lavillebeuvre, daughter of the said Jean U. Lavillebeuvre and his said late wife, she being above the age of puberty, and the wife of Victor J. Forstall, and by him herein duly assisted and authorized; and

6th. The said Jean U. Lavillebeuvre, herein acting in the capacity of natural tutor to his minor children, Suzanne, Eugenie and Jourdain Lavillebeuvre, the lawful issue of him and his said late wife: all residing in this city, and composing the whole of the heirs of the said late Elie Victor Jourdain, as aforesaid.

Fourth. The following, comprehending the whole of the heirs and legal representatives of the late Vincent Rillieux, late of this city, deceased, to wit:

1st. James P. Freret, William Freret, John Freret and Mistress Eugenie Freret, of lawful age, wife of James Stuart, and herein duly assisted and authorized by her said husband, the said appearers being the sole heirs of their late mother, whose name was Eugenie Rillieux, and sister of the said late Vincent Rillieux;

2d. Mistress Heloise Marie Rillieux, widow of the late L. M. Rey-

naud, late of this city, deceased, and sister of the said late Vincent Rillieux;

3d. The following, being the children and the grandchildren of the late Mistress Marie Desirée Rillieux, sister of the said Vincent Rillieux, and late wife of Jean Baptiste Etienne Germain Musson, of this city: Michel Musson, of lawful age; Mistress Anne Eugenie Musson, wife of Charles Francis Louis Defaure, Comte de Rochefort, residing in France, and herein represented by her brother, the said Michel Musson, by virtue of an act of procuration passed before J. C. Brent, consul of the United States at Paris, on the twenty-third day of September, eighteen hundred and thirty-nine, and annexed to an act passed before Adolphe Mazureau, a notary public in this city, on the sixteenth day of December, eighteen hundred and thirty-nine; Eugene Musson, now in California, herein represented by his brother, the said Michel Musson, by virtue of an act of procuration passed before L. Hermann, then a notary public in this city, on the second day of March, eighteen hundred and forty-nine; the five minor children of Mistress Marie Celestine Musson, wife of Laurent Pierre Augustin Hyacinthe DuGas, of Paris, now deceased, and herein represented by their grandfather, the said Germain Musson,; Henry Germain Musson, now residing in Europe, herein represented by his brother, the said Michel Musson, by virtue of an act of procuration passed before A. Gillors, chancellor general of the French legation at Athens, Greece, on the nineteenth day of September, eighteen hundred and forty-three, a certified copy whereof is annexed to an act passed before William Christy, then a notary public in this city, on the thirteenth day of May, eighteen hundred and forty-four;

4th. Mistress Marie Antoinette Rillieux, a sister of the said late Vincent Rillieux, and widow of the late Michael Smith, deceased, now residing in England, and herein represented by the said Germain Musson, by virtue of an act of procuration passed before Lairtullier and his colleague, notaries, in Paris, on the thirty-first day of August, eighteen hundred and thirty-seven, and annexed to an act passed before
596 Adolphe Mazureau, a notary public in this city, on the tenth day of January, eighteen hundred and thirty-eight; and

5th. Mistress Caroline Uchette Landreaux, daughter of the late Melicerte Rillieux, sister of the said Vincent Rillieux and of the late Honore Landreaux, deceased, and now wife of U. Kernion, she being herein duly assisted and authorized by her said husband.

Fifth. The following composing the whole of the heirs and legal representatives of the late Toussaint Mossy and of his late wife, Mrs. Marie Aimée St. Amand, deceased:

1st. Jules Mossy;

2d. Hypolite Mossy;

3d. The minor children of the late Toussaint Mossy, junior, deceased, to wit: Rose, Aimée, Eliza, Eugenie and Victor Mossy, herein represented by their mother and natural tutrix, Mrs. Eliza Amand, widow, first of the said Toussaint Mossy, junior, and second of the late Michel Rey, deceased; and

4th. The above-named three branches, as heirs of their late brother, the late Paul Mossy, deceased, and of his daughter the late Celestine Mossy, a minor, who died, leaving as her only and forced heir her grandmother, Mrs. Caroline Trudeau, widow of the late Thomas Urquhart, deceased; the said grandmother having renounced her claim to the said succession by an act passed before A. Ducatel, a notary public in this city, on the thirteenth day of November, eighteen hundred and fifty.

Sixth. The following, comprehending the whole of the heirs and legal representatives of the late John Linton, deceased:

1st. Stephen Duncan Linton, of lawful age.

2d. Mistress Charlotte Bingamin Linton, of lawful age, and wife of Francis Surget, junior, of Natchez, Mississippi, and herein duly assisted and authorized by her said husband, here present and approving; and

3d. Washington Jackson, jr., herein acting as the agent and attorney in fact of Stephen Duncan, of Natchez aforesaid, and guardian of the minors Mary Atwell Linton and John Linton, by virtue of the annexed power of attorney.

Seventh. Winter & McCall. 1st. Henry McCall, one of the members of the late firm of Winter & McCall, original parties to the aforesaid contract or compromise, and herein acting for and in behalf of himself; and

2d. George W. Christy, herein acting as the agent and attorney in fact of Mrs. Mary P. Winter, only daughter and heir of the late Joseph Winter, late partner of the said McCall, of lawful age, and now the wife of Henry W. Whiting, of the city of New York, by virtue of the annexed power of attorney.

Eighth. Mistress Louise Livingston, widow of the late Edward Livingston, and Mistress Cora Livingston, the only child of the said Edward Livingston, and now wife of Thomas P. Barton, both herein represented by Randall Hunt, who acts by virtue of the annexed power of attorney, dated on the fourteenth day of January last, 1851.

Ninth. Miss Amarylis Laura Delabigarre and Mrs. Maria Louisa Delabigarre, wife of Philip N. Searle, both of lawful age, and the only surviving heirs of their father, the late Peter Delabigarre, both represented by Robert N. Ogden and Abner N. Ogden, who act by virtue of the annexed power of attorney, dated on the tenth of April, 1850.

Tenth. The heirs of Bertrand Gravier:

1st. Jacques Gravier, son and only heir of Bertrand Gravier, jr., and only testamentary heir of Jeannie Gravier, and heir, for one-half of the late Jean Gravier, late of this city, herein represented by Henry
597 R. Denis, acting under and by virtue of the annexed power of attorney, a duly certified copy of a power of attorney deposited in the office of Adolphe Mazureau a notary public in this city, on the twenty-ninth of October, 1850.

2d. Jeannie Bordier, wife of Hellant Petit, acting in her own name and as heir, for one-half, of the said late Jean Gravier, and herein represented by Carl Kohn, who acts by virtue of a power of attorney duly recorded in the office of the said Mazureau, notary, on the twelfth day of July last past, a duly certified copy of which is hereto annexed.

Eleventh. The heirs of the late Alexander Labranche:

1st. Octave Labranche.

2d. Alcée Labranche.

3d. Adaline Labranche, widow of Drausin Labranche.

4th. Felicitie Lambranche, widow of Edmond Fortier. All represented herein by the said Henry R. Denis, by virtue of a power of attorney passed before Françios Cheuz, recorder and ex-officio notary public in and for the parish of St. Charles, in this State, on the thirtieth of December, 1850, a duly certified copy whereof is hereunto, on the margin, annexed for reference.

5th. The heirs of the late Louis Labranche, son of Alexander Labranche; Marie Louise Metéyé, Alexander Philip Auguste Metéyé and Richard Francis Camte Metéyé, minor children of the late Madam Labranche, daughter of the said Louis Labranche, and of François Me-

téyé, her husband; said minors herein represented by the said Henry R. Denis, by virtue of a power of attorney executed under private signature on the twenty-fourth day of June, 1851, and duly acknowledged before Philip Lacoste, notary in this city, on the first day of July instant, an hereto annexed.

Twelfth. And in fine, the several persons whose signatures are hereunto respectively subscribed, being the other original parties to the compromise or contract of the twentieth day of September, eighteen hundred and twenty, hereinbefore mentioned or referred to, or the duly authorized agents, heirs or legal representatives of the same.

Which said appearers declared, that whereas, by the aforesaid act of the twentieth of September, eighteen hundred and twenty, the new levee, now constituting New Levee street, together with all the batture then formed, or which might thereafter be formed, on the outside of said levee, extending to the water edge of the river Mississippi, along the front of the faubourg St. Mary, from the city line below to the property of W. W. Montgomery above, were ceded and given to the city of New Orleans as property inalienable and not liable to seizure, but to be forever left open for the use to which it was naturally destined; which said property, from that period to the present time, has remained in that condition, under the administration and at the expense of the city of New Orleans and of the second municipality thereof.

And whereas, the said batture has in the meantime increased to such a degree as to be no longer required in its full extent for the purpose contemplated by the parties to the said act.

And whereas, the council of the municipality number two did, on the sixteenth day of June, eighteen hundred and forty-six, approve a plan drawn by George F. Dunbar, for laying out three new streets, through the whole extent of said batture, between New Levee street and the Mississippi River, extending from Montgomery's property down to Common street, and did propose to sell and dispose of the lots of ground as designated on the said plan.

598 And whereas the said batture is increasing every year in extent and becoming less adapted to the object for which it was intended by the act of the twentieth of September, 1820, and instead of being an accommodation to the public and a convenience to commerce retards business and increases the expenses of the merchants and of the community in general;

Now, therefore, the said appearers having agreed to alter its destination, moreover declared that they had agreed and stipulated, and do by these presents, in their several capacities aforesaid, agree and stipulate as follows, to wit:

First. That the streets, to be named Fulton street, Front street, and Delta street, shall be laid out and opened through the said batture according to the plan drawn by the said Dunbar and approved by the council, with this difference, viz, that Fulton street and Front street shall be each sixty feet wide, and lots formed, to be numbered and to have such form and dimensions as set forth on the plan prepared by J. A. Beard, auctioneer, copies of which plan are deposited in this office for reference.

Second. That the lots composing the squares or islets between the three said new streets shall be sold at auction by Beard & May, auctioneers of this city, or by such other auctioneer as may be named by the council of municipality number two and the parties to this act; and it shall be made the duty of such auctioneer or auctioneers to draw up a

formal proces-verbal and to sign the same, and to deposit a duplicate thereof with the undersigned notary; and acts of sale shall be passed before the said notary and signed by the finance committee of the said council and the purchaser or purchasers, and the acts of sale thus signed shall be binding upon all the said parties of the second part as vendors; that the said auction sales shall be made after advertisements in at least two newspapers published in New Orleans, and shall be continued from time to time until all the lots are sold; that the lots on the square between New Levee and Fulton streets shall be sold in the winter of 1851 and 1852, unless the sale shall be postponed by account; that the lots in the squares between Fulton and Front streets shall be sold in the winter of 1852 and 1853, unless the parties to this act shall consent and agree to some other time of sale, with the exception of the two squares bounded by Poydras, Fulton and Girod streets and the river, which are not to be sold until, in the opinion of the council of municipality number two, they can be improved without interfering with the space necessary for the convenience of commerce at that part of the landing; that the lots in the squares between Front and Delta streets shall be brought into the market and sold whenever the council of municipality number two shall determine the same to be susceptible of private ownership and no longer necessary for the convenience of commerce; that the said lots shall be sold on the following terms and conditions, to wit, one-fifth of the price to be paid in cash and the balance in equal installments (divided into coupons if necessary) in one, two, three, and four years, with six per cent. interest from the day of sale and eight per cent. per annum after due, the payment whereof shall be secured by special mortgage on the property sold.

599 Third. That immediately after the sale of the property aforesaid, or any portion thereof, whether in cash or notes, or both, after deducting the necessary costs and expenses of the sale above, shall be divided and distributed in the manner following, to wit, one-third shall be paid and delivered to the persons authorized by law to receive the same, to be applied to the payment of the old city debt or general sinking fund of the city of New Orleans; one-third shall be paid and delivered to the original parties to the contract of the twentieth of September, eighteen hundred and twenty, or to the heirs and legal representatives thereof, whose assent is given to the present agreement, each one to respectively receive in proportion to the front of the lots or portions of ground originally owned by him as shown by the said contract; and the remaining one-third of said proceeds shall be paid and delivered to the treasurer of the said municipality number two for the exclusive use and benefit of said municipality.

Fourth. And it is, moreover, well understood and agreed to by and between the said parties that the said one-third part of the proceeds aforesaid coming to the said parties of the second part shall be paid over to each of them, in the proportions hereinbefore set forth, by the undersigned notary, as soon as practicable after the sale aforesaid, it being well understood also that in the said three grand divisions of the said proceeds the notes to be divided shall be so arranged as to be as nearly as possible equalized between the three said parties so far as the responsibility and standing of the several drawers thereof is concerned.

Fifth. That the three squares or lots of ground between North Market and South Market streets, and designated on the plans as markets, shall belong to the municipality number two upon the condition that the said municipality shall erect thereon market-houses or other public buildings, or shall leave the same open as public squares, and shall in

no event dispose of or sell the same as private property; and that all the portion of the batture between Delta street and the river Mississippi above Lafayette street to the line of Montgomery's property, and all that portion of the batture between Front street and the river Mississippi, from Lafayette street down to Canal street, shall be, and is hereby, vested in perpetuity and full ownership in the said municipality number two, in favor of whom the appearers to this act hereby cede and relinquish forever all their claims in and to the said batture, as well as all and every enlargement thereof or accretion thereto by new formations.

And, finally, it is well understood and agreed to, by and between the said contracting parties that this agreement or compromise is in no manner to change, alter, or prejudice the position or claims, of any kind or nature whatsoever, which may now exist or which may hereafter arise among or between any of the said parties of the second part to any particular amount or portion of the said one-third of the proceeds of the sale of the property aforesaid.

Thus done and passed in my office, at the city of New Orleans, in the presence of Auguste Commandeur and Charles Frederick Barry,
600 witnesses of lawful age and domiciliated in this city, who hereunto subscribe their names, together with the said parties and me, notary, on this thirtieth day of June, in the year of our Lord one thousand eight hundred and fifty-one.

Original signed:

A. BROTHER,
HENRY RENSHAW,
C. D. YANCEY,
Committee.

GEO. W. CHRISTY.
S. DUNCAN LINTON.
RANDELL HUNT.
M'L. MUSSON.
EUGENIE STEWART.
JAMES STEWART.
A. GRAILHE.
BERNOUDY.
MILLAUDON.
HENRY J. FORSTALL,
as Syndic of Rillieux.
J. B. JOURDAIN.
LEONIDE BLONDEAU.
A. BLONDEAU.
VICTOR J. FORSTALL,
Tuteur de sa fille.
SAMUEL J. PETERS, JR.
BEN. TOLEDANO.
A. COMMANDEUR.
C. KOHN.
WM. FRERET.
JOHN FRERET.
JAS. P. FRERET.
HENRY MCCALL.
G. MUSSON.
TOLEDANO.
HENRY R. DENIS.
E. F. LAVILLEBEUVRE,
per pro V. J. FORSTALL.
JULIEN COLVIS,
Assignee of Succ'n L. B. Macarty,
by J. P. BENJAMIN, *Attorney.*
M. E. FORSTALL.
ASPASIE E. PETERS.
J. U. LAVILLEBEUVRE.
EUGENIE TOLEDANO,
née LAVILLEBEUVRE.
CHS. FREDERICK BARRY.

H. B. CENAS, *Not. Pub.*

STATE OF LOUISIANA,
Parish of Orleans:

And again, to wit: on this twenty-fifth day of March, A. D. eighteen hundred and fifty-two, personally came and appeared Alexander Brother, Henry Renshaw and Charles D. Yancey, members of the

finance committee of the municipality number two of this city, named in the foregoing act of compromise, and acting in their capacities as such, who declared that, whereas, doubts seem to have arisen as to the true construction of the provisions or clauses in the said foregoing act of compromise in relation to the division of the one-third of the proceeds of the sales of the batture forming the object of said compromise, accruing to the original donors or their legal representatives, they, the said appearers, therefore now declare that, in their opinion, it is the intention and true meaning of the said clauses, that the said one-third of the said proceeds shall be divided among the said donors, or their legal representatives, who have signed the said foregoing act of compromise, according to the extent of the ground, or the front measurement thereof, to which the said donors, or their legal representatives, have preferred or set up claims or pretensions respectively, that is to say, that each of the original donors or proprietors shall receive one-third of the proceeds of the sale of the land in front of his former property, and that the entire proceeds of the sale are not to constitute one common fund among all the donors.

601 Thus done and passed in presence of the undersigned notary and witnesses, who hereunto subscribe their names, together with the said appearers, on the day, month and year above written.

Original signed:

A. BROTHER,
HENRY RENSHAW,
C. D. YANCEY,
Fin. Com. of Municipality No. Two.
CHAS. FREDERICK BARRY.
HENRY R. DENIS.
A. COMMANDEUR.
C. KOHN.
RANDELL HUNT,
Attorney for Heirs of E. Livingston.
H. B. CENAS, *Not. Pub.*

602 *Continuance: Extract from the minutes, January* 25, 1871.

N. O., M. AND C. R. R. Co. *vs.* THE CITY OF NEW ORLEANS. } No. 4.

This case, fixed for this day, came on. Counsel engaged present.

After hearing further testimony and evidence, the case was ordered to be continued to to-morrow at 11 o'clock, a. m. for argument.

Continuance: Extract from the minutes, January 26, 1871.

N. O., M. AND CHAT. R. R. Co. *vs.* THE CITY OF NEW ORLEANS. } No. 4.

This case, continued to this day for trial, came on. Counsel engaged present.

When, after hearing argument of Messrs. J. B. Eustis and W. W. King, this case was ordered to be continued to to-morrow at 11 o'clock, a. m. for further argument.

Continuance: Extract from the minutes, January 27, 1871.

N. O., M. AND C. R. R. Co. vs. THE CITY OF NEW ORLEANS. } No. 4.

This case, continued to this day for argument, came on. Counsel engaged present.

When, after hearing argument of Messrs. H. J. Leovy and Miles Taylor, this case was ordered to be continued to Monday, February 6, 1871, at 11 o'clock, a. m.

Continuance: Extract from the minutes, February 6, 1871.

N. O. M., AND C. R. R. Co. vs. THE CITY OF NEW ORLEANS. } No. 4.

This case, continued to this day for argument, came on. Counsel engaged present.

After hearing argument, Miles Taylor, esq., for Chas. Morgan, intervenor, this case was ordered to be continued to to-morrow at 11 o'clock, a. m.

Continuance: Extract from the minutes, February 7, 1871.

N. O., AND C. R. R. Co. vs. THE CITY OF NEW ORLEANS. } No. 4.

This case, continued to this day for argument, came on.

When, after hearing argument of G. S. Lacey, city attorney, it was ordered that this case be continued to to-morrow morning at 11 o'clock for further argument.

603 *Continuance: Extract from the minutes, February 8, 1871.*

N. O., M. AND C. R. R. Co. vs. THE CITY OF NEW ORLEANS. } No. 4.

This case, continued to this day for argument, came on.

After hearing argument of counsel, it was ordered by the court that this case be continued to Wednesday, February 15, 1871, at 11 o'clock, a. m.

Continuance: Extract from the minutes, February 15, 1871.

N. O., M. AND C. R. R. Co. vs. THE CITY OF NEW ORLEANS. } No. 4.

This case, continued to this day for argument, came on. Counsel engaged present.

When, after hearing argument of J. B. Eustis, esq., this case was ordered to be continued to Thursday, February 16, 1871, at 10 o'clock, a. m., for further argument.

Continuance: Extract from the minutes, February 16, 1871.

N. O., M. AND C. R. R. Co. vs. THE CITY OF NEW ORLEANS. } No. 4.

This case, continued to this day for argument, came on.

When, after hearing argument of Judge J. A. Campbell, of counsel, this case was ordered to be continued to to-morrow at 11 o'clock, a. m.

Case submitted: Extract from ths minutes of February 17, 1871.

N. O., M. AND C. R. R. Co. vs. THE CITY OF NEW ORLEANS. } No. 4.

This case, continued to this day for argument, came on.

When, after hearing argument of Messrs. J. A. Campbell and Thos. A. Clarke.

The court took this case under advisement.

604 State of Louisiana, eighth district court for the parish of Orleans

NEW ORLEANS, MOBILE, AND CHATTANOOGA Railroad Company *versus* THE CITY OF NEW ORLEANS. } No. 4.

Record in suit No. 5788, *docket U. S. circuit court.—Filed January* 25*th*, 1871.

Circuit court of the United States, fifth circuit and district of Louisiana.

CHARLES MORGAN vs. THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company. } No. 5788.

Petition for executory process.—Filed February 23*d*, 1869.

United States circuit court, district of Louisana.

CHARLES MORGAN vs. THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company. } No. 5788.

The petition of Charles Morgan, a citizen of the State of New York, residing in the city of New York, in the said State, respectfully represents—

That the New Orleans, Opelousas and Great Western Railroad Company, which has its domicil fixed in the city of New Orleans, in the State of Louisiana, and is a corporation created and existing
605 therein, under the laws of the State of Louisiana, and is in law a citizen of the State of Louisiana, was formed and organized under the act of the legislature of Louisiana entitled "An act for the organ-

ization of corporations for works of public utility," approved March 11th, 1852, for the purpose of constructing a railroad from the town of Algiers, on the opposite bank of the Mississippi River from New Orleans, and thence to Berwick's Bay, crossing said bay, and thence to or near Washington, on the Courtablean, in the parish of St. Landry, and afterwards to some point on the Sabine River, with a view to the extension of the said road across the State of Texas to El Paso, on the Rio Grande, and ultimately to the Pacific Ocean; and was afterwards, by the act of the legislature of the State of Louisiana entitled "An act to incorporate the New Orleans, Opelousas and Great Western Railroad Company," approved April 22d, 1853, specially created a body corporate and politic, with full power to sue and be sued, plead and be impleaded, and to do and perform all other acts, and enjoy all the rights and privileges incident to corporations, as will be more fully seen by reference to the said act of incorporation, at page 115 of the acts of 1853.

And your petitioner further represents, that by an act of the legislature of the State of Louisiana entitled "An act to extend the power of railroad companies," approved March 20th, 1856, in addition to the powers before conferred by law upon railroad companies, it was specially provided that any railroad company established under the laws of the State of Louisiana might borrow from time to time such sums of money as might be required for the construction or repair of any railroad, and for that purpose might issue bonds on their obligations, secured by mortgage upon the franchises and all the property of said company, and payable at such times and places as the president and directors might designate, with power to sell, pledge, or otherwise dispose of said bonds on such terms as the said president and directors might deem expedient; and that it was further specially provided in the said act that a mortgage made by any company as aforesaid should be binding in the several parishes through which a railroad might pass, by the recording of the mortgage in the parish where the principal office or domicil of the company was located, as will more fully appear by reference to the said act at page 205 of the acts of the State of Louisiana of 1856.

And your petitioner further represents that the said New Orleans, Opelousas and Great Western Railroad Company, on the 17th day of March, 1859, resolved, that for the purpose of obtaining means for the further construction of the road, the president shall be authorized and instructed to issue two thousand bonds of the New Orleans, Opelousas and Great Western Railroad Company, dated first April, 1859, redeemable on the first of April, 1889, for one thousand dollars each, bearing interest at the rate of eight per cent. per annum, payable semi-annually in coupons attached to the said bonds of eight pounds five shillings sterling, or forty dollars each, the principal of the said bonds made payable at their office in New Orleans, and the interest thereof being made payable in New Orleans, New York, or London, as the president, by his endorsement, might determine, and that the president should be authorized and instructed to secure the payment of the said bonds and the interest thereon, by a first mortgage on the first grand division of the railroad of the company (from Algiers, opposite the city of New Orleans), to Berwick's Bay, together with the land over which the said road is constructed, the equipments, appurtenances, rights, and franchises of the company applicable to that portion of the road, as will be seen by reference to a duly certified copy of the resolution passed
606 by the board of directors of the said New Orleans, Opelousas and

Great Western Railroad Company, on the said 17th day of March, 1859, which is herewith filed, marked Exhibit A.

And your petitioner further represents that, acting under the authority and instructions granted and given by the said resolutions, William G. Hewes, president of the New Orleans, Opelousas and Great Western Railroad Company, on the 1st day of April, 1859, by public act passed before Selim Magner, a notary public for the city and parish of New Orleans, and in presence of two witnesses, declared that, in pursuance of the resolutions of the board of directors of the said company, passed on the 17th day of March, 1859, as aforesaid, and in virtue of the authority conferred on the said company by the said acts of the legislature of the State of Louisiana, approved on the 22d day of April, 1853, and on the 20th day of March, 1856, he had on that day issued two thousand bonds of the New Orleans, Opelousas and Great Western Railroad Company, signed by him and by Benjamin F. Flanders, treasurer of the company, redeemable on the 1st day of April, 1889, for the sum of one thousand dollars each, bearing interest at the rate of eight per cent. per annum, payable semi-annually in coupons of forty dollars, or eight pounds five shillings sterling each, the principal of the said bonds being made payable at the office of the company, and the interest thereof payable in New Orleans, New York, or London, as the said president by his endorsement might provide; and all of which said bonds the said notary declared had been severally marked "ne varietur," and countersigned by him, for the purpose of more effectually identifying the same with the said act.

And your petitioner further represents that in the said public act the said William G. Hewes, president of the said New Orleans, Opelousas and Great Western Railroad Company, declared that for and in consideration of the premises, and in order to secure the full, faithful and punctual payment, and the redemption of each and all of the said bonds on that day issued as aforesaid, to any future holder or holders thereof, and to each and every one of them, when the same should become due and payable, and the payment of the interest accruing thereon in the manner and at the periods of time in the said public act stipulated, as evidenced by the coupons attached to the said bonds, respectively, payable on the first day of April and October of each year, the said New Orleans, Opelousas and Great Western Railroad Company, granted in favor of Edmond J. Forstall or bearer, as well as in favor of all and every person or persons whomsoever who might become the holder or holders of said bonds or coupons, or any of them, a first mortgage lien or privilege upon the whole of the completed grand division of the railroad between Algiers (opposite the city of New Orleans) and Berwick's Bay then in full operation, constructed by the said company in pursuance of their charter, and being a distance of eighty miles, together with the road beds of the main tracks and branches, and also all the depots and lands specially appertaining to them, all the buildings, wharves, and all the equipments and franchises belonging and appertaining to the said division of the said road therein mortgaged and referred to; and all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils, implements, rights of way, and effects generally of every nature and description whatsoever, in use upon the said division of the said railroad, or in any way attached to or appertaining to the same, without any exception or reservation, as well as all such as should or might thereafter, at any time be placed upon or attached to said
607 division of the said railroad, whether for the purpose of replacing others removed, or from any other cause whatsoever; and prom-

ising not to alienate or encumber, or in any wise affect the same, or any part or portion thereof, to the prejudice of the said mortgage, as will more fully appear by reference to an authentic copy of the said act herewith filed, marked Exhibit "B."

And your petitioner further represents that the said public act of mortgage was duly recorded on the 8th day of April, 1859, in the office of the recorder of mortgages in and for the city and parish of New Orleans, as will be seen by reference to the certificate of the said recorder of mortgages herewith filed, marked Exhibit "C"

And your petitioner further represents that he is the legal holder of eight hundred and forty (840) of the said bonds issued by the said New Orleans, Opelousas and Great Western Railroad Company, as aforesaid, and marked "ne varietur," and countersigned by the said notary to identify them with the said public act of mortgage aforesaid, given on the property of the said company, as described and set forth in the said public act, and that he is also the legal holder of three thousand six hundred and twenty-five (3,625) coupons of interest of forty (40) dollars each, now past due and unpaid, attached to the said bonds, and of four thousand two hundred and ninety-six (4,296) coupons of interest detached, of forty (40) dollars each, which belonged to and bear the numbers of other bonds issued by the said New Orleans and Great Western Railroad Company, and marked "ne varietur," and countersigned by the said notary to identify them with the said public act of mortgage, given to secure the payment of the said bonds and coupons of interest as aforesaid, which said bonds and said coupons of interest held by petitioner are hereto annexed for reference, and are made part of this petition, and are set forth, enumerated, and described in the book herewith filed and marked Exhibit "D."

And your petitioner further represents that the said New Orleans, Opelousas and Great Western Railroad Company, has altogether neglected and failed to pay the said seven thousand nine hundred and twenty-one coupons of interest, as they respectively fell due; that the same are still due and unpaid, and that the said company is now indebted to your petitioner on the same, in the sum of three hundred and sixteen thousand eight hundred and forty ($316,840) dollars.

And your petitioner further represents that, in the sixteenth annual report of the president and directors of the New Orleans, Opelousas and Great Western Railroad Company, to the stockholders of the said company, dated on the 25th day of January, 1869, it is declared that there are 15,465 past due interest coupons of forty (40) dollars each, on the first mortgage bonds of the said company, amounting to six hundred and six thousand six hundred ($606,600) dollars, which are now outstanding and unpaid, as will be seen by reference to a copy of an extract of the said report, duly certified under the seal of the said company, which is herewith filed, marked Exhibit "E."

And your petitioner further represents that the said act of mortgage passed before Selim Magner, a notary public as aforesaid, and in the presence of two witnesses as aforesaid, imports a confession of judgment, and that petitioner has a right in the premises to proceed by executory process against the said New Orleans, Opelousas and Great Western Railroad Company, and have the said property subject to the said mortgage, consented, stipulated, granted, and contained in the said public act of mortgage, seized and sold according to law for the whole debt, the payment of which is secured by the said mortgage, and to have the price
608 of the said property subject to the said mortgage, when sold payable as follows, to wit: The said sum of six hundred and six

thousand six hundred dollars ($606,600), the amount of the said coupons of interest past due, which are now outstanding and unpaid as aforesaid, in cash, and the remainder payable on the 1st day of April, 1889, with interest thereon at the rate of eight (8) per cent. per annum *thereon*, payable semi-annually, on the 1st day of April and the 1st day of October of each year, the terms of the credit granted by the original contract to the said New Orleans, Opelousas and Great Western Railroad Company in the said bonds and the said public act of mortgage.

And your petitioner further represents that he is informed and believes that the said coupons of interest, in law, bear interest from and after they respectively arrive at maturity and become payable, and that he now expressly reserves his right to claim interest on the same respectively in another suit.

Wherefore your petitioner prays that executory process may be granted him in the premises; that three days' notice may be given to the said New Orleans, Opelousas and Great Western Railroad Company to pay your petitioner the said sum of three hundred and sixteen thousand eight hundred and forty ($316,840) dollars due and unpaid as aforesaid on the 7,921 coupons of interest held by your petitioner, and that in default of the said payment the said mortgaged property hereinbefore described may be seized and sold according to law for the whole debt, the payment of which is secured by the said act of mortgage, the price of the said sale to be payable as follows, to wit: The sum of six hundred and six thousand six hundred ($606,600) dollars, the amount due on interest coupons past due on the first-mortgage bonds of the said company outstanding and unpaid as aforesaid, and the costs of this proceeding, payable in cash, and the remainder payable on the 1st day of April, 1889, with interest thereon at the rate of eight per cent. per annum, payable semi-annually, on the 1st day of April and the 1st day of October of each year, the terms of credit granted by the original contract to the said New Orleans, Opelousas and Great Western Railroad Company in the said public act of mortgage and the said bonds identified therewith. And your petitioner further prays for all and general relief.

(Signed) MILES TAYLOR,
Attorney for Petitioner.

Order.—Filed March 30th, 1869.

It is ordered that executory process issue in this case as prayed for in the within petition, and that the said New Orleans, Opelousas and Great Western Railroad Company be notified for three days to pay petitioner the said sum of three hundred and sixteen thousand eight hundred and forty dollars ($316,840) and the costs of this proceeding, and that in default of said payment the said mortgaged property described in the petition may be seized and sold according to law for the whole of the debt, the payment of which is secured by the said mortgage described and set forth in said petition, the price of the said sale payable as follows, to wit: The sum of six hundred and six thousand six hundred dollars ($606,600), and the costs of this proceeding in cash, and the remainder payable on the 1st day of April, 1889, with interest thereon at the rate of eight per cent. per annum, payable semi-annually, on the 1st day of April and the 1st day of October of each year.

March 30th, 1869.

(Signed) E. H. DURELL, *Judge.*

609 *Exhibit A, referred to and filed with the foregoing petition.*

Copy of resolutions of the board of directors of the New Orleans, Opelousas and Great Western Railroad Company, passed on the seventeenth day of March, 1859.

1st. Resolved, That for the purpose of obtaining means for the further construction of the road the president be, and he is hereby, authorized and instructed to issue two thousand bonds of the New Orleans, Opelousas and Great Western Railroad Company, dated first April, 1859, redeemable on the first of April, 1889, for one thousand dollars each, bearing interest at the rate of eight per cent. per annum, payable semi-annually, in coupons attached to said bonds of eight pounds five shillings sterling, or forty dollars each, the principal of said bonds being made payable at their office in New Orleans, and the interest thereof being made payable in New Orleans, New York or London, as the president by his endorsement may determine.

2d. Resolved, That the president be further authorized and instructed to secure the payment of said bonds and the interest thereon by a first mortgage on the first grand division of the railroad of the company from Algiers (opposite the city of New Orleans) to Berwick's Bay, together with the land over which the said road is constructed, the equipments, appurtenances, rights, and franchises of the company, applicable to this portion of the road.

3d. Resolved, That such an amount of money as may be necessary to meet each semi-annual interest of the outstanding bonds of the company shall be provided for, pro rata, by monthly deposits in the Louisiana State Bank of this city, and entered as follows: "The New Orleans, Opelousas and Great Western Railroad Company's interest account;" and all funds so deposited shall be considered special, and shall not be used for any other purpose than for the payment by said bank of running interest on the bonds of the company as maturing. And the president is hereby authorized to sign an act of agreement with the president of said bank binding the company as aforesaid.

4th. Resolved, That in case the Louisiana State Bank should decline to continue to be the agents of said New Orleans, Opelousas and Great Western Railroad Company, or in case the charter of said bank should expire, then the president of this company shall choose any other of the chartered banks in this city for the carrying out of the purposes of these resolutions.

NEW ORLEANS, *November 17th*, 1868.

A true copy from the minutes from the record.

[SEAL.] (Signed) GEO. W. SQUIRES,
Secretary.

Exhibit B, referred to in and filed with the foregoing petition.

Mortgage New Orleans, Opelousas and Great Western Railroad Company to Edmond J. Forstall.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that this day before me, Selim Magner, a notary public in and for this city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, personally came and appeared William G.

Hewes, esq., of this city, president of the New Orleans, Opelou-
610 sas and Great Western Railroad Company, a duly incorporated institution of this State, and herein acting in his said capacity, by virtue and in pursuance of the resolutions of the board of directors of said company passed on the seventeenth day of March, eighteen hundred and fifty-nine, which resolutions, duly certified copies whereof are hereunto in the margin annexed for reference, are in the words and figures following, to wit:

1st. Resolved, That for the purpose of obtaining means for the further construction of the road, the president be, and he is hereby, authorized and instructed to issue two thousand bonds of the New Orleans, Opelousas and Great Western Railroad Company, dated first April, 1859, redeemable on the first April, 1889, for one thousand dollars each, bearing interest at the rate of eight per cent per annum, payable semi-annually in coupons attached to said bonds, of eight pounds five shillings sterling, or forty dollars each, the principal of said bonds being made payable in New Orleans, New York or London, as the president by his endorsement may determine.

2d. Resolved, That the president be further authorized and instructed to secure the payment of said bonds and the interest thereon by a first mortgage on the first grand division of the railroad of the company from Algiers (opposite the city of New Orleans) to Berwick's Bay, together with the land over which said road is constructed, the equipments, appurtenances, rights, and franchises of the company applicable to this portion of the road.

3d. Resolved, That such an amount of money as may be necessary to meet each semi-annual interest of the outstanding bonds of the company shall be provided for, pro rata, by monthly deposits in the Louisiana State Bank of this city, and entered as follows: "The New Orleans, Opelousas and Great Western Railroad Company's interest account;" and all funds so deposited shall be considered special, and shall not be used for any other purpose than for the payment *of* said bank of running interest on the bonds of the company as maturing. And the president is hereby authorized to sign an act of agreement with the president of said bank binding the company as aforesaid.

4th. Resolved, That in case the Louisiana State Bank should decline to continue to be the agents of the said New Orleans, Opelousas and Great Western Railroad Company, or in case the charter of said bank should expire, then the president of this company shall choose any other of the chartered banks of this city for the carrying out the purposes of these resolutions.

Which said appearer declared that, in pursuance of the above-recited resolutions, and also by virtue of the authority conferred upon said company by, first, the ninth section of an act of the legislature of the said State of Louisiana entitled "An act to incorporate the New Orleans, Opelousas and Great Western Railroad Company," duly approved on the twenty-second day of April, 1853 (No. 149); and, second, by another act of the same legislature duly approved on the twentieth day of March, 1856, entitled "An act to extend the powers of railroad companies" (No. 194), he has, in his capacity aforesaid, this day issued two thousand bonds of the New Orleans, Opelousas and Great Western Railroad Company, signed by him and by Benjamin F. Flanders, treasurer of said company, redeemable on the first day of April, eighteen hundred and eighty-nine, for the sum of one thousand dollars ($1,000) each, bearing interest at the rate of eight per cent. per annum, payable semi-annually in coupons of forty dollars, or eight pounds five shillings

sterling each, the principal of said bonds being made payable at
611 the office of the company in the city of New Orleans, and the interest coupons in New Orleans, New York or London, as he, the said president, may by his endorsement provide. And all which bonds have been severally marked "ne varietur," and countersigned by me, the said notary, for the purpose of more effectually identifying the same herewith.

Now, therefore, in consideration of these premises, and in order to secure the full, faithful and punctual payment, and the redemption of each and all the said bonds (this day issued as aforesaid) to any future holder or holders thereof, and to each and every one of them, when the same shall become due and payable, together with the interest accruing thereon, in the manner and at the periods of time hereinabove stipulated, as evidenced by the coupons attached to the said bonds respectively, payable on the first days of April and October of each year, the said New Orleans, Opelousas and Great Western Railroad Company do, by these presents, by their president, (the said William G. Hewes) grant, in favor of Edmond J. Forstall or bearer, as well as in favor of all and every person or persons whomsoever, who may become the holder or holders of said bonds or coupons or any of them, a first mortgage lien or privilege upon the whole of the completed grand division of the railroad between Algiers (opposite the city of New Orleans) and Berwick's Bay, now in full operation, constructed by the said company in pursuance of their charter, and being a distance of eighty miles, together with the road-beds of the main track and branches, and also all the depots and lands specially appertaining to them, all the buildings, wharves, and all the equipments and franchises, belonging and appertaining to this division of the road herein mortgaged and referred to, and also, all and singular, the cars, locomotives, engines, wagons, machinery, fixtures, utensils, implements, rights of way and effects generally of every nature and description whatsoever in use upon the said division of the said railroad, or in any wise attached or appertaining to the same, without any exception or reservation, as well as all such as shall or may hereafter at any time be placed upon or attached to said division of the said railroad, whether for the purpose of replacing others removed therefrom or from any other cause whatsoever, the said company promising, by their said president, not to alienate nor encumber, nor in any wise affect the same or any part or portion thereof to the prejudice of these presents.

By reference to the annexed certificates of the recorders of mortgages in and for the parish' of Orleans, Jefferson, St. Charles, La Fourche, Interior, Assumption, Terre Bonne, and St. Mary, respectively, traversed by the division of the said railroad herein mortgaged, it will appear that there exists no mortgage or encumbrance whatsoever inscribed against the said division of the said railroad, franchises and appurtenances, nor upon any of the lands or property connected therewith, owned by the said company.

And now personally came and appeared the said Edmond J. Forstall, who, after having read the foregoing act of mortgage, declared that he does, by these presents, accept the same as well for himself as for all and every other person or persons who may hereafter become the purchaser or purchasers, assignee or assignees, holder or holders of the said bonds or coupons, or any number thereof, or any of them, together with all the rights, privileges, and benefits thereunto belonging or in any wise appertaining.

Thus done and passed in my office at the said city of New Orleans,

in the presence of Edward G. Gottschalk and Forester Brugier, witnesses of lawful age, domiciliated in this city, who hereunto subscribed their names, together with the said parties and me, the said notary, on this first day of April, in the year of our Lord one thousand eight hundred and fifty-nine.

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(Signed) WILLIAM G. HEWES, *President.*
EDM. J. FORSTALL.
E. G. GOTTSCHALK.
F. BRUGIER.
S. MAGNER, *Not. Pub.*

A true copy.
New Orleans, 9th November, 1868.
[SEAL.] (Signed) S. MAGNER, *Not. Pub.*

[5-c. int. rev. stamp affixed and cancelled.]

Exhibit C, referred to and filed with the foregoing petition.

By act before S. Magner, notary public, dated 1st April, 1859, William G. Hewes, president of the New Orleans, Opelousas and Great Western Railroad Company, granted in favor of Edmond J. Forstall a first mortgage lien and privilege upon the whole of the contemplated grand division of the railroad between Algiers, opposite the city of New Orleans, and Berwick's Bay, now in full operation, together with the road-beds, branches, depots, lands, buildings, wharves, cars, engines, wagons, machinery, right of way, etc., etc., to secure the payment of two thousand bonds of said railroad company, dated 1st April, 1859, signed by said Hewes, as president, and Benjamin F. Flanders, treasurer of said company, redeemable on the 1st April, 1889, for $1,000 each, with interest at 8 per cent. per annum, payable semi-annually in coupons of $40 or £8 5 shillings each, which coupons are attached to said bonds, and payable on 1st days of April and October of each year. All which bonds were paraphed by said notary.

New Orleans, April 8th, 1859.
(Signed) JOHN HOLMES, *Recorder.*

Mortgage, $2,000,000, with int., etc., etc.

I, the undersigned, deputy recorder of mortgages for this city and parish of Orleans, do hereby certify the above to be a true and correct copy of the record of the act of mortgage recorded in B. 73, fo. 85, of this office.

New Orleans, November 18th, 1868.
[SEAL.] (Signed) A. DUCATEL, JR., *Dy Rr.*

Exhibit E, referred to in and filed with the foregoing petition.

Extract from the sixteenth annual report of the president and directors to the stockholders of New Orleans, Opelousas and Great Western Railroad Company, dated 25th January, 1869.

The total indebtedness of the company at this time is as follows:

1,987 first-mortgage bonds, of one thousand dollars each, on 80 miles of contemplated road	1,987,000 00
34 second-mortgage bonds, of one thousand dollars each, issued in settlement of 850 past-due coupons of first-mortgage bonds, $40	34,000 00

613	Bills payable, with interest on same to 1st January, 1869, issued for 1,145 first-mortgage coupons, of $40 each	40,966 24
	Outstanding unpaid coupons of first-mortgage bonds, 15,165 of $40	606,600 00
	Outstanding coupons unpaid of second-mortgage bonds, including those of January 1st, 1869, 102 of $40	4,080 00
	Balance claimed by U. S. Government on 1st January, 1869	34,011 59
		2,706,657 83
	Of this sum there is now due in cash on 1st mortgage bonds	606,600 00
	On bills payable, with interest on same, 1st January, 1869, issued for first-mortgage coupons	$20,966 24
	On outstanding coupons of second-mortgage bonds	4,080 09
	Balance claimed by the U. S. 1st January, 1869	34,011 59
	Total	$685,657 83

A true copy.
[SEAL.] (Signed) A. B. SEGER, *President.*

Certificate of discontinuance and of payment of costs.—Filed February 23d, 1869.

Received, New Orleans, February 23d, 1869, from Miles Taylor, attorney for Charles Morgan, the sum of two hundred and ten dollars, amount costs in full in the suit of Charles Morgan vs. The New Orleans, Opelousas and Great Western Railroad Co., No. 180 of the docket of the 6th district court for the parish of Orleans.
[SEAL.] (Signed) WM. WOEPLER, *Clerk.*

Certificate of the clerk.—Filed February 23d, 1869.

U. S. circuit court, district of Louisiana.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

Miles Taylor, the attorney of Charles Morgan, the plaintiff in the above-entitled case, has this day filed or deposited with the clerk of the court, as annexed to and made part of the petition in the said case, the following:

1st. A copy of the resolutions of the board of directors of the New Orleans, Opelousas and Great Western Railroad Company, passed on the 17th day of March, 1859, marked Exhibit A.

2d. An authentic copy of the act of mortgage passed before Selim Magner, notary public, on the 1st of April, 1859, by the New Orleans, Opelousas and Great Western Railroad Company to Edmond J. Forstall and others, to secure the payment of bonds and interest coupons issued by the company, marked Exhibit B.

3d. A certificate of the recorder of mortgages of the city and parish of Orleans, dated November 18th, 1868, showing the recording of

614 the said mortgage act in the mortgage office of the city and parish of New Orleans on the 8th of April, 1859, which is marked Exhibit C.

4th. Eight hundred and forty bonds of $1,000 each, issued by the New Orleans, Opelousas and Great Western Railroad Company, on the 1st of April, 1859, and 3,625 coupons of interest of $40 each detached, which belonged to and bear the numbers of bonds issued by the New Orleans, Opelousas and Great Western Railroad Company, and which bonds and coupons of interest attached and detached are set forth, enumerated, and described in a certain book, marked Exhibit D.

5th. The book marked Exhibit D.

6th. A certified copy of an extract of or from the sixteenth annual report of the president and directors of the New Orleans, Opelousas and Great Western Railroad Company to the stockholders of the company, dated 25th of January, 1869, and marked Exhibit E.

February 23d, 1869.

(Signed) D. URBAN, *Clerk.*

Writ of seizure and sale.—Issued March 30th, 1869, returned and filed November 20th, 1869.

United States of America, circuit court of the United States, fifth judicial circuit and district of Louisiana.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

The President of the United States to the marshal of the United States for the district of Louisiana, greeting:

You are hereby commanded to make legal demand from the New Orleans, Opelousas and Great Western Railroad Company of the payment of the sum of three hundred and sixteen thousand eight hundred and forty dollars ($316,840) and the costs of this proceeding, cash, and that in default of said payment to seize and sell according to law (for the whole of the debt, the payment of which is secured by the mortgage described and set forth in the plaintiff's petition), the property belonging to the said company, and described as follows: The whole of the contemplated grand division between Algiers (opposite the city of New Orleans) and Berwick's Bay, in full operation, constructed by the said company, in pursuance of their charter, and being a distance of eighty miles, together with the road-beds of the main track and branches, and also all the depots and lands specially appertaining to them, all the buildings, wharves, and all the equipments and franchises belonging to and appertaining to the said division of the said road, and all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils, implements, rights of way and effects generally of every nature and description whatsoever in use upon the said division of the said railroad, or in any way attached to or appertaining to the same, without any exception or reservation.

The price of the said sale payable as follows, to wit: The sum of six hundred and six thousand six hundred dollars ($606,600), and the costs of this proceeding, in cash, and the remainder payable on the 1st day of April, 1889, with interest thereon at the rate of eight per cent,

615 per annum, payable semi-annually on the 1st day of April and the 1st day of October of each year.

And what you do in the premises you make due return thereof, together with this writ, to our said court, according to law.

Witness the Hon. Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, at New Orleans, this 30th day of March, 1869.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *Dy Clk.*

Marshal's return on the foregoing writ.

U. S. circuit court.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

Writ of seizure and sale received March 31st, 1869, by the U. S. marshal, and on the 31st day of March, 1869, served on the New Orleans, Opelousas and Great Western Railroad Company, by delivering to A. B. Seger, president of said company, at the office of said company, No. 69 Canal street, a notice to pay into my hands within three days from the service of said notice, the sum of $316,840 due to the plaintiff, and the costs, and that in default of such payment I should seize and sell the property described in the petition filed and order made in the said cause, which accompanied the said notice and served therewith, to satisfy the mortgage debt agreeably to the said order and according to law.

And on the 5th day of April, 1869, more than three days having elapsed after the service of the said notice and the said petition, and the said order made on the same, and default having been made in the payment of the said sum, or any part thereof, I proceeded to seize and take into my possession the property described in the document hereto annexed, marked A, and made part hereof. And after the expiration of the legal delay from the date of the service of notice of said seizure on the said New Orleans, Opelousas and Great Western Railroad Co. I advertised the said property for sale by advertisements, announcing the sale to take place at the entrance to the custom-house on Old Levee street, between Canal and Custom-house streets, in this city, on the 25th of May, 1869, at twelve o'clock m. Said advertisements were inserted and published in three newspapers in the city of New Orleans, to wit, in the New Orleans Republican, Commercial Bulletin, and New Orleans Picayune, from the 6th day of April, 1869, to the day of sale, being full thirty days from the date of the first notice given in said newspapers. Said advertisements were inserted and published in said newspapers on the 16th, 20th, 24th, and 29th, April, 1869, and on the 4th, 11th, 18th, and 25th of May, 1869.

And after having further complied with and performed all the additional previous legal requisites, and after the said property duly appraised, I did expose the same at public sale at auction, according to law, at the said entrance to the custom-house on Old Levee street, between Canal and Custom-house streets, in this city, on the said 25th day of May, 1869, at twelve o'clock m., when, after making due proclamation of said sale, and duly crying the said property and appurtenances, the same were adjudi-

cated unto Charles Morgan, of the city of New York, he being the last and highest bidder thereon, for the price and sum of ($2,050,000) two
616 millions and fifty thousand dollars, of which said sum, according to the published conditions of said sale ($686,000) six hundred and eighty-six thousand dollars and the costs of suit, to wit, $15,825, were paid to me in cash in United States Treasury notes, and the remainder of the purchase price, to wit, ($1,348,175) one million three hundred and forty-eight thousand one hundred and seventy-five dollars, the said purchaser, Charles Morgan, assumes the payment of on the 1st day of April, 1889, with interest thereon at the rate of 8 per cent. per annum, payable semi-annually on the 1st day of April and 1st day of October of each year, until the final payment and extinction of the whole on the 1st day of April, 1889. And the said property and appurtenances described in the advertisement hereto annexed and more fully in the document marked "A," also hereto annexed as part hereof, remains specially mortgaged for the final payment of the said balance of purchase price, with the interest as aforesaid due and accruing thereon.

New Orleans, November 20th, 1869.

(Signed) F. J. HERRON,
Late U. S. Marshal.
Per J. R. WEST,
Late Dy U. S. Marshal.

Document annexed to the foregoing return.

U. S. circuit court.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

To the New Orleans, Opelousas and Great Western Railroad Co.:

By virtue of a writ of seizure and sale issued and to me directed by the hon. circuit court of the United States for the fifth circuit and district of Louisiana in the above-entitled suit, I hereby notify you to pay into my hands within three days from the service of this notice three hundred and sixteen thousand eight hundred and forty dollars due to plaintiff, and costs; and that in default of such payment I shall seize and sell the property described in the accompanying petition and order served herewith, to satisfy the mortgage debt, agreeably to said order and according to law.

(Signed) JOHN FAHY,
Dy Marshal.

U. S. MARSHAL'S OFFICE,
New Orleans, March 31st, 1869.

Return on above notice.

Notice of demand served March 31st, 1869, and on the same day served a copy of the within notice and copy of the petition and order in the said case accompanying the same, on the New Orleans, Opelousas and Great Western Railroad Company, by delivering them to A. B.

Seger, president of said company, at their domicil, No. 69 Canal street, in the city of New Orleans.

(Signed) JOHN FAHY,
Dy Marshal.

U. S. MARSHAL'S OFFICE,
31*st March*, 1869.

617 *Document annexed to the foregoing return on writ of seizure and sale.*

United States marshal's office, district of Louisiana, U. S. circuit court.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

To the New Orleans, Opelousas and Great Western Railroad Co.:

Take notice that I have seized, and after the legal delay, shall proceed to advertise and sell, according to law, "the whole of the completed grand division of the railroad between Algiers (opposite the city of New Orleans) and Berwick's Bay, now in full operation, constructed by the said company in pursuance of their charter, and being a distance of eighty miles, together with the road-beds of the main track and branches, and also all the depots and lands specially appertaining to them; all the buildings, wharves, and all the equipments and franchises belonging and appertaining to this division of the road; and also all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils, implements, rights of way, and effects generally, of every nature and description whatsoever, in use upon the said division of the said railroad, or in any wise attached or appertaining to the same, without any exception or reservation," to pay and satisfy the writ issued in this case (with interest and costs), unless the same is immediately paid.

(Signed) JOHN FAHY,
Deputy Marshal.

Notice of seizure issued April 5th, 1869; and on the same day served a copy hereof on The New Orleans, Opelousas and Great Western Railroad Co., by delivering it to A. B. Seger, the president of said company, at their domicil, No. 69 Canal street, in this city.

New Orleans, April 5th, 1869.

(Signed) JOHN FAHY,
Dy Marshal.

Copy of advertisement annexed to the foregoing return on writ of seizure and sale.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

Circuit court of the United States, fifth circuit and district of Louisiana. No. 5788.

By virtue of a writ of seizure and sale to me directed by the honorable the circuit court of the United States for the fifth circuit and dis-

trict of Louisiana, in the above-entitled suit, I will proceed to sell at public auction, at the entrance to the custom-house on Old Levee street, between Canal and Custom-house streets, in the second district of this city, on Tuesday, May 25th, 1869, at 12 o'clock m., the following-described property, viz:

618 The whole of the completed grand division of the railroad between Algiers (opposite the city of New Orleans) and Berwick's Bay, now in full operation, constructed by the said company in pursuance of their charter, and being a distance of eighty miles, together with the road-beds of the main tracks and branches, and also all the depots and lands specially appertaining to them; all the buildings, wharves, and all the equipments and franchises belonging and appertaining to this division of the road, and also all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils, implements, rights of way and effects generally, of every nature and description whatever, in use upon the said division of the said railroad, or in any wise attached to or appertaining to the same, without any exception or reservation, as per inventory on file in this office, seized in the above suit.

TERMS OF SALE.—The sum of six hundred and eighty-six thousand six hundred dollars ($686,600), and costs, payable in cash at the time of adjudication in United States Treasury notes, and the remainder of the purchase price payable on the first day of April, 1889, with interest thereon at the rate of eight per cent. per annum, payable semi-annually on the first day of April and the first day of October of each year.

Cost of deed, internal-revenue stamps, recording, etc., at the expense of the purchaser.

United States marshal's office, New Orleans, April 15th, 1869.

F. J. HERRON,
U. S. Marshal, District of Louisiana.

[Ap. 17, 20, 24, 29; M'y 4, 11, 18, 25.]

Agreement.—Filed November 25th, 1869.

U. S. circuit court.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

It is hereby agreed by and between the counsel for plaintiff and defendants in the above-entitled cause that the transcribing of Exhibit D, filed with and referred to in plaintiff's petition, is dispensed with, the original to be used instead; that the transcribing of document marked A, annexed to and filed with the marshal's return on the writ of seizure and sale, is dispensed with, and that such dispensation shall not effect the completeness of the transcript of record nor the clerk's certificate thereto.

New Orleans, November 25th, 1869.

(Signed) M. M. COHEN & SON,
For Defendants.

(Signed) MILES TAYLOR,
Attorney for Charles Morgan.

619 *Supplemental petition and order thereon.—Filed April 20th*, 1869.

U. S. circuit court, district of Louisiana.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

To the honorable the circuit court of the United States for the district of Louisiana.

The supplemental petition of Charles Morgan, plaintiff in the above-entitled case, leave of the court being first had and obtained for filing the same, respectfully represents:

That since the order for executory process to issue in the said case against the said New Orleans, Opelousas and Great Western Railroad Company, to have the said property, subject to the said mortgage consented, stipulated, and contained in the said public act of mortgage, seized and sold according to law for the payment of the whole debt secured by the said mortgage, and to have the price of said sale payable as follows, to wit: The sum of $606,600, the amount of the said coupons of interest past due and unpaid, as set forth in said petition, for cash; the interest coupons on the said two thousand bonds, issued by the said New Orleans, Opelousas and Great Western Railroad Company on the first day of April, 1859, and identified as aforesaid with the said act of mortgage which were to fall due and become payable on the 1st day of April, 1869, have become due and payable and have not been paid, amounting to the sum of eighty thousand dollars ($80,000), of interest on the first-mortgage bonds, the payment of which was and is now secured by the said mortgage in addition to the said sum of $606,600 before due and unpaid on the said bonds as aforesaid; and that in the premises the sum of six hundred and eighty-six thousand six hundred dollars ($686,600) of the said mortgage debt is now past due and unpaid, and that the price of the sale of the said mortgaged property under the said executory process ought to be made payable, six hundred and eighty-six thousand six hundred dollars ($686,600), the amount of the said coupons of interest past due and unpaid as aforesaid, in cash, and the remainder only payable on the 1st day of April, 1889, with interest thereon at the rate of eight per cent. per annum, payable semi-annually on the 1st day of April and the 1st day of October of each year, on the credit granted by the original contract, as provided for in the said order for executory process.

Wherefore, your petitioner prays that the portion of the price of the said sale to be paid in cash at the time of the said sale to be hereafter made according to law under the said order for executory process made herein, shall be the sum of six hundred and eighty-six thousand six hundred dollars ($686,600), the amount of the coupons of interest on the said bonds now past due and which are unpaid as aforesaid, and the remainder only payable on the 1st day of April, 1889, with interest thereon as provided for in the order for executory process heretofore granted herein.

(Signed) MILES TAYLOR,
Attorney for Petitioner.

620 *Order.*

Let this supplemental petition be filed, and the prayer thereof granted.

April 20th, 1869.

(Signed) E. H. DURELL, *Judge.*

Petition.—Filed June 1st, 1869.

United States of America, circuit court of the United States, district of Louisiana.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

To the honorable the judges of the circuit court of the United States for the district aforesaid:

The petition of the said New Orleans, Opelousas and Great Western Railroad Company, the defendant named in the proceedings in the cause described in the said title, respectfully shows, that the said Charles Morgan obtained from the honorable E. H. Durell, on his petition, an order for executory process upon the statements and the exhibition of evidence filed with the same, as will appear from the petition, order, and evidence remaining of file in the said court.

2. That executory process did issue from the office of the clerk of said court, and was placed in the hands of the marshal of the said court for execution, as will appear upon the papers of record in said court.

3. That notice of the said process was given to the corporation (defendant), and that the said defendant applied to the circuit court to enjoin and restrain the execution of the process, and before the same was executed; but the court, after advising upon the motion for the injunction on the 24th day of May, 1869, refused the motion, and on the following day the property set forth in the marshal's return of seizure was sold under the order and writ of seizure thereon, and your petitioners, the said corporation, are dispossessed and disseized of the entire property by an adjudication of the same to the said Morgan, who was the purchaser at the said sale.

4th. The said defendant further shows that since the 25th day of May, 1869, the said marshal has advertised in reference to the adjudication aforesaid, and is proceeding to distribute the price arising from the said sale made by him under the conditions aforesaid, as will appear by his advertisement filed herewith as a part of this petition and marked Exhibit A.

Your petitioners show that the original order of seizure made upon the petition of Charles Morgan by the judge; the issue of the process and the seizure thereon; the refusal of the court to allow of an injunction as to restrain the process in any manner; the sale of the property by the marshal at the time and place upon the advertisements and appraisements aforesaid; and his adjudication of the property to Charles Morgan; and the proceedings to adjudicate upon the distribution of the money arising from the sale, are irregular, illegal, and tend to the wrong and damage of your petitioner.

6th. Your petitioner avers that the order could not have been legally

made without notice to the said defendant by proper process.
621 That Charles Morgan did not show such a right as a creditor as to warrant the issue; nor is the order supported by authentic evidence; nor are proper parties made thereto; nor can final process issue from the court before trial and that all parties in interest in the mortgage should have been made to the same, and that the subject of the suit was only cognizable in chancery, and the execution and sale ought not to have been proceeded with until after the objections set forth in the injunction had been decided, whereas it appears that the advertisements were made pending that motion, and the sale took place the day following.

Your petitioner prays that your honors would consider of this petition and of the record in the said cause, No. 5788, between the said parties and the evidence and notices therein, and also the application for injunction and the bill filed, and that the same may be held and taken as a part of this petition, and that your honors would award a writ to the said Charles Morgan, expressing a willingness to hear his complaint, and in order that the validity of the said order for process, the process thereon, the proceedings of said marshal, may be examined and their legality ascertained, and that all proceedings under the same may be suspended and restrained by writ until the final order be made herein, and upon the matter of this petition; and your petitioners will ever pray, etc.

The petitioners submit to the court the records in this court in the cases aforesaid, No. 5788.

(Signed) M. M. COHEN.
CAMPBELL, SPOFFORD & CAMPBELL, *for Petitioner.*

Advertisement marked Exhibit A, and referred to in the foregoing petition.

U. S. marshal's sales.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

United States circuit court, district of Louisiana, No. 5788.

The property of the New Orleans, Opelousas and Great Western Railroad Company, embraced in and subject to the mortgage granted by the said company by public act passed before Selim Magner, notary public in the city of New Orleans, first day of April, 1859, to secure the payment of $2,000,000, with eight per cent. per annum thereon, payable semi-annually on the first day of April and the first day of October in each year, having been sold on the 25th inst., under process in my hands issued out of the circuit court of the United States for the district of Louisiana in the above-entitled case, to satisfy the entire debt due by the said company under the said mortgage, and which debt is represented by 2,000 bonds for $1,000 each, issued by the said company, and identified with the said mortgage by the paraph of the said notary, and by the coupons of interest belonging to the said bonds respectively, and it being the duty of the United States marshal to make a distribution of the price of the said property among the parties holding the said bonds and coupons in proportion to their respective rights under the said mortgage.

Notice is therefore hereby given to all the holders of the said bonds of the said New Orleans, Opelousas and Great Western Railroad Company, issued by the said company and identified with the said
622 mortgage and of the coupons of interest belonging to them respectively, to produce the same to the said marshal on or before the ninth day of June, 1869, in order that he may be informed of the amount of the same, and may be enabled to make a distribution of the proceeds of the said sale pro rata between the holders of the same in proportion to their respective interests in the said mortgage debt.

F. J. HERRON,
Late U. S. Marshal, 79 Custom-house street.

Submission of petition.—Extract from the minutes.

United States circuit court for the fifth circuit and district of Louisiana. April term, 1869.

NEW ORLEANS, *Tuesday, June* 1, 1869.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, district judge.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

The counsel for the defendant this day moved the court to grant the prayer of the petition now presented. Whereupon the court took time to consider.

Rule.—Extract from the minutes of Tuesday, June 1, 1869.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

On motion of Miles Taylor, attorney for Charles Morgan, the plaintiff, it is ordered that the New Orleans, Opelousas and Great Western Railroad Company show cause, on Tuesday, the 8th inst., at 11 a. m., why said company shall not forthwith furnish to F. J. Herron, late U. S. marshal, and now acting in the capacity of marshal in said case, a statement of the number of bonds issued by said company and now outstanding, and a statement of the number of coupons belonging to the said bonds which have been paid or extinguished by the said company, and showing the number of the said bonds to which they belonged, and the numbers on the said coupons respectively, showing the dates at which they respectively matured, certified under the seal of the said company, and verified by the oaths of the president and secretary of the said company on the grounds filed.

Marshal's return.

Received June 2, 1869, by the U. S. marshal, and on the same day of June, 1869, served copy of within rule on New Orleans, Opelousas and

623 Great Western Railroad Company, named herein, by leaving same in hands of A. B. Seger, president of said company, at office, 69 Canal street, in this city.

New Orleans, June 3, 1869.

(Signed) S. W. REED,
Dy U. S. Marshal.

Rule and grounds.—Filed June 1, 1869.

United States circuit court, district of Louisiana.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

On motion of Miles Taylor, of counsel for Charles Morgan, the plaintiff in the above entitled case, and on giving the court to understand and be informed—

That a sale was made on the 25th day of May, 1869, of the whole of the contemplated grand division of the railroad between Algiers (opposite the city of New Orleans) and Berwick's Bay, constructed by the said New Orleans, Opelousas and Great Western Railroad Company, in pursuance of their charter, together with the railroad beds of the main tracks and branches, and also all the depots and lands specially appertaining to them, all the buildings, wharves, and all the equipments and franchises belonging and appertaining to the said division of the said road, and all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils, implements, rights of way and effects generally of every nature and description whatsoever in use upon the said division of said railroad, etc., under process issued out of this honorable court in the said case, to satisfy the whole of the debt then due and owing by the said New Orleans, Opelousas and Great Western Railroad Company, the payment of which was secured by a certain mortgage granted by the said company by public act passed before Selim Magner, a notary public in the parish of Orleans, on the 1st day of April, 1859, on the said property sold, as aforesaid, on the said 25th day of May, 1869, which said debt, as described in the said act of mortgage, amounted to the sum of two millions of dollars ($2,000,000.00), bearing interest at the rate of eight per cent. per annum, payable semi-annually on the 1st day of October, 1859, and on the 1st day of April and the 1st day of October, 1860, and in each and every year thereafter until the 1st day of April, 1889, when the principal of the said debt became due, and which said debt was represented by 2,000 bonds, issued by the said company, for $1,000 each, and by sixty coupons of interest attached to and belonging to each bond for the sum of $40 each, and numbered from 1 to 60, and falling due respectively in the order in which they were numbered on the 1st day of October and of April, in each of the years from the date of the said mortgage act, and up to the 1st day of April, 1889.

And on further giving the court to understand and be informed that from and after about the year 1861 the said company failed to pay the said coupons of interest with any regularity, and that a very large number of coupons representing the interest of the said debt, and the payment of which is secured by the stipulations contained in the said act of mortgage in the same manner as the principal of the debt, and

which fell due in the years 1862, 1863, 1864, 1865, 1866, 1867, 1868, and 1869 are still due and unpaid by the said company.

624 And on further giving the court to understand and be informed, that to enable the officer into whose hands the price of the said sale is placed, to be distributed among the holders of the said bonds and the coupons of interest pro rata (the proceeds of the said sale not being sufficient to pay the said mortgage debt in full), it is necessary for the said officer to ascertain the number of the said bonds issued as aforesaid by the said company which are now outstanding; and also to ascertain what coupons of interest, which are now past due, have been paid by the said company in order to enable him to know the existing amount of the said mortgage debt, and to put him in condition to prepare a tableaux showing the disposition and distribution to be made of the proceeds of the said sale among the holders of the said bonds and interest coupons, to be laid before the court to aid it in making a proper distribution of the same.

And on further giving the court to understand and be informed, that the said company has a record showing the number of the said bonds issued and now outstanding, and a record also of the coupons of interest belonging to the said bonds, which have been paid by the said company, and are now extinguished and ought to be cancelled.

And on further giving the court to understand and be informed, that F. J. Herron, late marshal of the United States for the district of Louisiana, and now acting in the capacity of marshal in the said case, has applied to the said company for a statement, by the proper officer of the said company, of the number of the said bonds issued by the said company and now outstanding, and for a statement also of the coupons of interest belonging to the said bonds which have been paid by the said company, and that the said company has refused to furnish him, the said acting marshal, in his official capacity—

It is ordered that the said New Orleans, Opelousas and Great Western Railroad Company show cause on Tuesday, the 8th day of June, 1869, at 11 o'clock a. m., why the said company shall not forthwith furnish to the said F. J. Herron, in his said capacity, a statement of the number of the said bonds issued by the said company and now outstanding, and a statement of the number of coupons belonging to the said bonds which have been paid or extinguished by the said company, and showing the number of said bonds to which they belonged, and the numbers on the said coupons, respectively, showing the dates at which they respectively matured, certified under the seal of the said company, and verified by the oaths of the president and secretary of the said company.

Objections to motion made on 1st June, 1869—*Filed June* 8, 1869.

United States circuit court, district of Louisiana.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

And into court by the undersigned, his counsel, comes Charles Morgan, and in opposition to the motion to grant the prayer of the petition, presented to the court on or about the 1st day of June, 1869, and of

which notice was received by the said Charles Morgan, through his counsel, on the 7th day of June, 1869, says:

First. That the allegations made by the defendants in their said petition (a copy of which, signed by M. M. Cohen and Campbell,
625 Spofford & Campbell, for the said defendants, was left at the office of the undersigned, counsel of the said Charles Morgan, and is now in his possession), under Nos. 1, 2, 3, 4, 5, 6, as to the validity of the order for process in the said above-entitled case, and of the process itself, and of the proceedings under the same up to the sale and adjudication of the property seized under the said process, are in substance the same with those made by the said defendants in their bill, filed on the chancery side of the court, in the cause entitled "The New Orleans, Opelousas and Great Western Railroad Company vs. Charles Morgan," number 5817 of the docket of the court, wherein they prayed for an injunction to enjoin and restrain the said Charles Morgan from proceeding with the process granted in the above-entitled case; that after a hearing of all the said matters and things, upon the motion for an injunction to issue upon the allegations contained in the said bill, filed as aforesaid, the said injunction was referred to, and that, in point of fact, so far as the said petition contains allegations touching the validity of the order for process in this case, and of the process itself, and of the proceedings under the same, up to the sale and adjudication of the property seized under the said process, it is an attempt to obtain an injunction in an irregular and informal manner, and in a way unknown to our law, upon the same grounds which were declared by a degree of this court, rendered on the 24th day of May, 1869, to be altogether insufficient; and

Second. That as the remaining matter set forth in the said petition, to wit: That the marshal has published a notice calling on the holders of the bonds and coupons of interest belonging to the same, issued by the said defendants, to produce the same to him in order that he may be informed of the amounts of the same, and may be enabled to make a distribution of the proceeds of the sale of the said property pro rata between the holders of the same, he further says there is no foundation in law for the application made by the defendants in the said petition to have the proceedings of the said marshal suspended in the premises, inasmuch as the said marshal is now engaged, under the authority of law, in ascertaining the amounts now due on the said mortgage debt, and who are the holders of the same, in order that he may be enabled to present to the court a tableaux of distribution showing the amount of the proceeds of the sale of the said property which is to be allotted or apportioned to each bond and interest coupon issued by the said defendants, which are now outstanding and due, and after legal proceedings had thereon, to obtain the authority of the court to pay the amounts due on the same respectively to the holders of the said bonds and coupons, in execution of the process of the court now in his hands. And the said Charles Morgan says further, in opposition to the said motion, that the said defendants have no right to interfere with the execution of the process of the court in the above entitled case in the way and manner proposed, and that the intent and design of the said defendants in the said petition is to prevent the said marshal from getting the information necessary to enable him to discharge his duty and to present a tableaux of distribution to the court for its final order thereon, as will more fully appear from the refusal, which he is ready to prove, of the said New Orleans, Opelousas and Great Western Railroad Company to furnish the said marshal with a statement of the said bonds

now outstanding, and of the interest coupons belonging to the said bonds respectively, which have been paid by said company.

(Signed) MILES TAYLOR,
Solicitor.

326 *Judgment on petition submitted by defendants.—Extract from judgment docket.*

United States circuit court, fifth circuit and district of Louisiana. April term, 1869.

NEW ORLEANS, *Monday, June* 14, 1869.

Court met pursuant to adjournment. Present: Hon. E. H. Durell, district judge.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company. } No. 5788.

The court having duly considered the petition and exhibits submitted by the petitioner in this cause, and being satisfied that the prayer thereof cannot be granted, it is ordered and decreed that the said petition be dismissed, with costs.

Judgment rendered June 14, 1869. Judgment signed June 18, 1869.

(Signed) E. H. DURELL, *Judge.*

Motion and order: Rule of June 1, 1869, *reassigned.—Extract from the minutes of Tuesday, June* 15, 1869.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company. } No. 5788.

On motion of Miles Taylor, attorney for the plaintiff, ordered that the rule of first instant be renewed and assigned for Friday, eighteenth instant, at 11 a. m., and that defendant be notified hereof.

Marshal's return.

Received June 16, 1869, by the U. S. marshal, and served copies of the within as follows: June 16, 1869, one on J. M. Spofford, 27 Commercial Place; other June 16, 1869, on M. M. Cohen, personally, at 30 Camp street, New Orleans.

(Signed) S. W. REED,
Dy U. S. Marshal.

Answer to rule of June 1, 1869.—*Filed June* 18, 1869.

Circuit court of the United States, district of Louisiana, April term, 1869.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company. } No. 5788.

This respondent, being served with the rule of the plaintiff of

627 the first June instant, protests against any order or judgment in the said suit, or any order recognizing that there was a valid sale of the property described in the motion, and against the jurisdiction of this court in this behalf, for the following reasons:

1. That it does manifestly appear that one of the judges aforesaid did make, upon the petition of Charles Morgan, the plaintiff, an order for the seizure and sale of the property of your petitioner, without any citation being made, or other process from this court being issued, to show any cause or opposition to the order, and that, upon evidence that was not authentic, and which this respondent had no opportunity to countervail or contradict.

2. That the said Charles Morgan, by that petition, contrary to his social right and duty, did commence the suit ex-parte, and did obtain the order of seizure and sale, and has executed the same without joining any creditor by bonds under the same instrument, although he had exact knowledge that he was not the only creditor under the mortgage he has assumed to control.

3. That your respondents being informed, by a notice from the marshal, of his purpose to seizure and sell the said property, did apply to the circuit court for an injunction, upon a bill filed by your respondents in the said circuit court, wherein your respondents set forth at large their opposition to the order, the proceedings under it, and the jurisdiction over the same, and the prosecution of it, and the court did, on the 24th April, 1869, only one day before the sale, refuse said motion; but although the said application had been pending from the day of the filing of the bill till the 24th of April, the said Morgan did cause the sale to be made the following day, to wit, the 25th April, 1869, as stated in the motion.

4. The respondents aver that the notices of sale were not sufficient and the advertisements incomplete, and not in accordance with the code of practice, and that the appraisements were insufficient, and that the sale by the marshal is illegal and cannot be supported, because of the failure to advertise, appraise and give the suitable notices.

5. Your respondents aver that the most manifest irregularity and illegality in the proceedings of the said Charles Morgan is made apparent by this rule. The property in which creditors are interested has been sold and conveyed to one of the said creditors, and the said plaintiff and the marshal are compelled to make inquiry whose property they have thus appropriated by judicial process.

The respondents respectfully ask the court to examine on this motion the proceeding in the cause aforesaid, and the bill for the injunction filed on behalf of the respondents, the objections to the process and the execution of the same, as testimony, as well as records in the cause; and that your honor, after examination of the objection and complaint of these respondents, would set aside the original order of seizure and sale as having been illegally and improvidently granted, and all the subsequent proceedings thereon. That if your honor should decline to rescind the order of seizure and sale, that then that your honor would order that the sale be set aside, and all the proceedings under it be cancelled for the irregularities in the same.

These respondents protest that they have no interest in the distribution of the moneys, and that their title is to a restitution of the property; but they respectfully submit to the court that the marshal who made the sale has been removed from office, and that his successor is fulfilling his functions, and was so at a date prior to the sale, and that the magnitude of the cause, and the number of persons concerned

628 in the funds, render it proper to enforce the thirty-fifth and thirty-sixth rules of this court against the ex-marshal who made the sale, by which all the moneys received by the officers, and persons acting as officers thereof, arising from the sale of property in pursuance of any order or decision of the court, shall be paid into court by the marshal. That the court would direct suitable inquiries, through a proper officer of the court, as to the mode of distribution and the persons entitled, and that the ex-marshal be discharged from further duty; and these defendants respectfully say that they are not amenable to such an order as is proposed in the motion of the said plaintiff.

(Signed) M. M. COHEN AND
CAMPBELL, SPOFFORD & CAMPBELL,
For the N. O., O. and G. W. R. R. Co.

Order: Rule of June 1, 1869, *made absolute.—Extract from the minutes of Friday, June* 18, 1869.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company. } No. 5788.

The rule of first June came up. Miles Taylor, for plaintiff in rule; M. M. Cohen for defendant. When, after hearing answer to the rule and argument thereon, it is ordered that the rule be made absolute, and that the New Orleans, Opelousas and Great Western Railroad Company furnish forthwith to F. J. Herron, acting in his capacity of late marshal, a statement of the number of bonds issued by the said company, and now outstanding, and a statement of the number of coupons belonging to said bonds which have been paid or extinguished by the said company, and showing the number of said bonds to which they belonged, and the numbers on said coupons respectively, showing the dates at which they respectively matured, certified under the seal of the said company and verified by the oaths of the president and secretary of the said company.

Motion and order to withdraw bonds and interest coupons.—Extract from the minutes of Tuesday, June 29, 1869.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company. } No. 5788.

On motion of Miles Tayler, of counsel for Charles Morgan, it is ordered that the said Charles Morgan have leave to withdraw the bonds and coupons as described in book on file in the cause, Exhibit D, on giving a receipt for the same, endorsed or written on the said Exhibit D, on the grounds filed.

629 *Motion for leave to withdraw bonds and interest coupons.—Filed June 29, 1869.*

United States circuit court, district of Louisiana.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

On motion of Miles Taylor, of counsel for Charles Morgan, and on suggesting to the court that the mortgaged property described in the petition has been sold under the process of the court to satisfy the mortgage debt as prayed for, and the marshal being now about to make a distribution of the proceeds of the said sale, and of whatever realized under the said process, it is now necessary for the said Charles Morgan to withdraw the bonds and coupons of interest in the possession of the court in the said cause, as evidence on which the said process was granted, in order that he may present them to the said marshal, so as to have the portion of the said proceeds of the said sale, etc., paid to him and applied in part payment of the same—

It is ordered that the said Charles Morgan have leave to withdraw the said bonds and coupons as described in book on file in the case as Exhibit D on giving a receipt for the same endorsed or written on the said Exhibit D.

Petition for writ of error and order thereon.—Filed June 30, 1869.

THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

CHARLES MORGAN, PLAINTIFF,
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD CO., defendants. } No. 5788.

To the honorable the judges of the said circuit court:

The defendants, the New Orleans, Opelousas and Great Western Railroad Company, in the suit aforesaid being aggrieved by the judgment in the cause aforesaid, respectfully pray that the said court may allow a writ of error to the next term of the Supreme Court of the United States, to sit at Washington City on the first Monday of December next, and that the record, proceedings order, and judgment in the said cause may be certified to the said court according to law. That citation may issue to the said plaintiff, the defendants offer to give bond, with sureties, for the prosecution of their writ.

(Signed) M. M. COHEN,
For Defendants.

Order.

A writ of error is allowed in this case as prayed for and according to law, returnable to the Supreme Court of the United States on the first Monday of December next, the petitioners giving bond in the

630 sum of five hundred dollars, with good and solvent security, conditioned as the law directs.

June 30, 1869.

(Signed) E. H. DURELL, *Judge.*

Bond for writ of error.—Filed July 8, 1869.

Know all men by these presents that we, the New Orleans, Opelousas and Great Western Railroad Company, as principal, and Samuel Smith, as surety, are held and firmly bound unto Charles Morgan in the full and just sum of five hundred dollars, to be paid to the said Charles Morgan, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents; sealed with our seals, and dated this seventh day of July, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas, lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit pending in said circuit court, wherein Charles Morgan was plaintiff, and the New Orleans, Opelousas and Great Western Railroad Company was defendant, judgment was rendered against the said New Orleans, Opelousas and Great Western Railroad Company, defendant, and the said New Orleans, Opelousas and Great Western Railroad Company having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Charles Morgan, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next.

Now, the condition of the above obligation is such, that if the said New Orleans, Opelousas and Great Western Railroad Company shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) A. B. SEGER, *President.* [L. S.]

" SAM. SMITH. [L. S.]

Sealed and delivered in presence of—

(Signed) M. M. COHEN.

United States circuit court.

THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company *vs.* CHARLES MORGAN. } No. 5817. In chancery.

Record in above cause referred to in the petition of defendants. Filed and submitted June 1st, 1869.

Bill.—Filed April 5th, 1869.

To the honorable the judges of the circuit court of the United States for the district of Louisiana:

The New Orleans, Opelousas and Great Western Railroad Company, a corporation existing by the laws of Louisiana, and domiciled in the city of New Orleans, bring this their bill against Charles Mor-

631 gan, a citizen of the State of New York, found in New Orleans, in the district of Louisiana.

And thereupon your orators complain and say that, by an act of the legislature of the State of Louisiana, which became a law the 22d April, 1853, they were recognized as a body corporate under an act to provide for the organization of corporations, March 11th, 1852, their association adopted, and their powers, privileges, and rights enlarged; and that, by a number of the acts of the legislature, they have since that time been treated as a corporation; aid has been extended to them by the State to aid their enterprise; and the city of New Orleans, under their authority, has subscribed for their stock; public lands have been granted to them, and authority conferred upon them to borrow money, to mortgage their rights, estates, and privileges, for the payment thereof, and to issue bonds, with coupons attached, the interest to be paid in New Orleans, New York, or London, at their election; and to do other acts for the advancement of their undertaking, as described in their act of incorporation. All of which will more fully appear by a reference to the public acts of the legislature, to which your orators crave reference as a part of their bill as well as to those acts which refer to the company alone.

Your orators further complain and say that, under those powers, your orators, in the year 1859, caused to be prepared two thousand bonds for one thousand dollars each, payable to E. J. Forstall, at that time and now a citizen of the State of Louisiana, and a resident in New Orleans; and then and there made a contract with the said E. J. Forstall for the security of the same and for the indemnification of the holders of the said bonds, a printed copy whereof is hereunto attached, marked A, as an exhibit to this bill, and which your orators pray may be taken as a part hereof.

Your orators further complain and say that, under the said mortgage, the bonds were placed in the markets of New York, London and New Orleans, and elsewhere, and above nineteen hundred of the same are in circulation among a great number of holders, who reside in Louisiana and other parts of the United States, and some of whom are beyond the limits of the United States and subjects of foreign States in conditions of friendship with the United States.

4. Your orators further complain and say that one Charles Morgan, who claims to be a citizen of New York, but whose residence and business are, for a portion of the year, in the city of New Orleans, has appeared before one of your honors with a petition, in which, after representing the facts of the incorporation of your orators, and the mortgage and issue of bonds under the same, as aforesaid, avers that he is the holder of eight hundred and forty (840) of the said bonds; and that he is the legal holder of three thousand six hundred and twenty-five (3,625) coupons of forty dollars each, which are past due and unpaid; and that he holds besides four thousand two hundred and ninety-six (4,296) which belonged to and were attached to other bonds issued by the said company, under the mortgage aforesaid, and detached therefrom, and which said bonds, he affirms, bear the notarial mark of ne varietur, but which fact he has not authenticated by the production of the bonds themselves; nor is there any mark alleged *alleged* to exist on the said last-mentioned coupons; nor is there in fact any mark on said coupons, nor notarial identification on them as coupons at all, subjecting them to the operation of the mortgage in a suit of this description.

5. Your orators further complain and say that the said Charles Mor-

gan, in his petition, represents that there are fifteen thousand four hundred and sixty-five coupons unpaid, and has filed, as evi-
632 dence, a report of the company making a debt due of six hundred and six thousand six hundred dollars, ($606,600,) and, assuming to represent the creditors of the corporation, has applied to the court for a summary order of seizure and sale of the property of the corporation, for the amount of the supposed debt, without production of other evidence than he has submitted as aforesaid, or authority for his action. No bonds or coupons have been filed or exhibited, except those which he holds himself with his petition; nor is the name of any holder stated or suggested.

6. Your orators further complain and say that the judge of the court has issued an order of seizure and for the sale of the property described in the mortgage, unless the defendant shall pay to the plaintiff the debt aforesaid claimed by him upon the evidence thus set forth; and in case of default that the property shall be sold for the payment in cash of the ($606,600) sum which the petitioner alleges to be the outstanding debt of unpaid coupons, nearly one-half of which ($289,760) he does not represent and does not hold; and the authentic evidence of which he has not exhibited conformably to the law of the procedure he has adopted.

7. Your orators further complain and say that they have had no other notice of the proceedings aforesaid than of the fact of the seizure and proposed execution of the order. The petition has not been served upon them with any citation to make an answer thereto; and the order does not purport to be a judgment of the court ascertaining the debt and default of payment, but is a complete and perfect authority to the marshal to sell; all of which will manifestly appear by reference to the proceedings in the said cause, which are on file among the records of this court, and to which your orators crave reference in the same manner as if they were represented and set forth in this bill as an exhibit to the same.

8. And your orators further complain and say that they have been advis*h*d that the process adopted by the defendant in this cause is illegal and unjust; that every holder of the bonds of the said company has an equal right to that of the plaintiff in the mortgage aforesaid, and a right to examine into, and inquire into, the authenticity and validity of the claims of the plaintiff, and to propound his own claims, and to be heard by the court as to the manner of selling and dealing with the said property, and that no disposition of this common and social right should be made until all the holders of the bonds have been made parties, or are properly represented in court.

9. And your orators further complain and say that by the acts of Congress no suits can be made in the circuit court of the United States unless process be served on the party, and that no process has issued in this cause.

10. And your orators further complain and say, that under the acts of Congress, the circuit court of the United States can have no cognizance of any suit to recover the contents of a mortgage in favor of any assignee, unless his assignor could maintain the suit, and that it appears on the face of the mortgage that the claim of the said plaintiff under his mortgage is derived from the acceptance of the same, and subrogation of his right therein by E. J. Forstall, who then was, and from thence hitherto has been, and now is, a citizen of the State of Louisiana, and that there is not upon the petition or other proceedings

of the said Charles Morgan any averment to the contrary hereof, and no averment of the fact of the citizenship of said E. J. Forstall.

11. Your orators further complain and say, that by the Constitution of the United States, the judicial power of the United States is vested in courts wherein cases of law and equity may be decided ac-
633 cording to due cause of law or equity; that the enforcement of a security like the present is a proceeding cognizable only in a court of equity, and that the number of the persons interested, the extent of the interests involved, the nature of the property mortgaged, and the magnitude of the property and of the incumbrances, make it a case appropriate only to an equitable tribunal; that the modes of proceeding at law are unfitted for the determination of the rights involved and for the disposition of the estate, and that the proceedings adopted by the said defendant is not appropriate nor suited to the case, nor consistent with the laws of the United States.

12. Your orators further complain and say, that the property subject to the operation of this process is estimated to be worth about three millions of dollars, and consists of a railroad and its equipments; that on a sale upon thirty days' notice the same cannot fail to be sacrificed; that the process being of doubtful legality, the jurisdiction of the judge to order it being unsettled by decision, and the uncertainties attending it, would operate to depress and diminish the value of the property sold.

Your orators further say that the effect of the seizure has been pernicious, and that the interests of all parties require that the sale, if one be required, shall take place in the orderly and regular course of judicial procedure in equity.

13. Your orators further complain and say, that even if the mode of procedure adopted by defendants is allowable under any conditions in the courts of the United States for Louisiana, it is not proper under the conditions of this case. Many of the creditors of the company reside in Europe; others in different parts of the United States. The corporation is indebted to others upon a second mortgage and upon account; the property of the corporation is not of a nature to obtain purchasers readily. There is a necessity for concert, co-operation, and interview among creditors.

There are public and private interests involved in the daily operations of the road. The public considerations that prevented Congress from making railroads subject to bankrupt laws apply with tenfold force to making them subject to the abnormal proceeding known in Louisiana as executory process, a proceeding coming as an inheritance from Spain, and which, in its nature and application, is contrary to the procedure of courts of law and equity which the framers of the Constitution of the United States contemplated as repositories of their judicial power.

Your orators aver that the said Charles Morgan is a capitalist, and has purchased a large amount of the debt of the corporation, under the depressed circumstances of the corporation since the termination of the war; that these depressed circumstances are owing to political and public conditions that were not under the control of the corporation, or of its managers. But neither the amount of his securities nor the circumstances of his purchase give to him any interest in the mortgage above that of other holders of bonds. He is a partner, and his obligation and duty are to preserve with fidelity the social claims of every other bondholder. But such a sale as is contemplated would give to him an advantage for his capital and the amount of his debt that no

other creditor would have at the sale; and, if he be disposed, to enable him to buy the effects of the corporation at a price, compared to their value, which would be nominal, and thus give to him a leonine control of the liquidation of the partnership interests.

Your orators further complain and say, that the stockholders have interests which should also be regarded, and no sale should be made which did not present favorable conditions for obtaining a full value of the
634 property; that the State of Louisiana and city of New Orleans are stockholders under the acts of the legislature before referred to. To the end, therefore, that the said Charles Morgan may be made a party to this bill, and that he may make an answer to the same, and especially that he may answer the charges and allegations of the same as if they were repeated, and he distinctly interrogated thereto; and your orators pray that the said Charles Morgan be enjoined and restrained from proceeding with his executory process, and that the advertisement of sale be prevented, and that the seizure be set aside, and that the said Charles Morgan be required to file a bill on the chancery side of this court, if he proceeds further, to which all the mortgage creditors, together with your orators, may be made parties or be represented.

And your orators pray that the court may make suitable orders for the protection of the property of the corporation from seizure, and that its operations be regulated, if continued under seizure; and that such other and further relief be granted as may be consistent with equity and good conscience.

(Signed) M. M. COHEN,
Solicitor.

CIRCUIT COURT OF THE UNITED STATES,
District of Louisiana:

Before me, clerk of the circuit court aforesaid, comes A. B. Seger, president of the said corporation, who maketh oath and saith that the bill filed by said corporation in said court is true in substance and matter of fact.

(Signed) A. B. SEGER.

Sworn to and subscribed before me this 5th April, 1869.

(Signed) D. URBAN, *Clerk.*

Exhibit marked "A," referred to in and filed with the foregoing bill.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that this day, before me, Selim Magner, a notary public in and for this city and parish of New Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared William G. Hewes, esq., of this city, president of the New Orleans, Opelousas and Great Western Railroad Company, a duly incorporated institution of this State, and herein acting in his said capacity, by virtue and in pursuance of the resolutions of the board of directors of said company, passed on the seventeenth day of March, eighteen hundred and fifty-nine, which resolutions, duly certified copies whereof are hereunto in the margin annexed for reference, are in the words and figures following, to wit:

1. Resolved, That for the purpose of obtaining means for the further construction of the road, the president be, and he is hereby, authorized

and instructed to issue two thousand bonds of the New Orleans, Opelousas and Great Western Railroad Company, dated first April, 1859, redeemable on the first April, 1889, for one thousand dollars each, bearing interest at the rate of eight per cent. per annum, payable semi-annually, in coupons attached to said bonds of eight pounds five shillings sterling, or forty dollars each, the principal of said bonds being made payable at their office in New Orleans, and the interest thereof
635 being made payable in New Orleans, New York, or London, as the president by his endorsement may determine.

2. Resolved, That the president be further authorized and instructed to secure the payment of said bonds, and the interest thereon, by a first mortgage on the first grand division of the railroad of the company from Algiers (opposite the city of New Orleans) to Berwick's Bay, together with the land over which said road is constructed, the equipments, appurtenances, rights and franchises of the company, applicable to this portion of the road.

3. Resolved, That such an amount of money as may be necessary to meet each semi-annual interest of the outstanding bonds of the company shall be provided for, pro rata, by monthly deposits in the Louisiana State Bank of this city, and entered as follows: "The New Orleans, Opelousas and Great Western Railroad Company's interest account;" and all funds so deposited shall be considered special, and shall not be used for any other purpose than for the payment by said bank of running interests on the bonds ot the company, as maturing. And the president is hereby authorized to sign an act of agreement with the president of said bank, binding the company as aforesaid.

4. Resolved, That in case the Louisiana State Bank should decline to continue to be the agents of said New Orleans, Opelousas and Great Western Railroad Company, or in case the charter of said bank should expire, then the president of this company shall choose any other of the chartered banks in this city for the carrying out of the purposes of these resolutions.

Which said appearer declared, that in pursuance of the above-recited resolutions and also by virtue of the authority conferred upon said company by first, the ninth section of an act of the legislature of the State of Louisiana, entitled "An act to incorporate the New Orleans, Opelousas and Great Western Railroad Company, duly approved on the twenty-second day of April, 1853, (No. 149); and, second, by another act of the same legislature duly approved on the twentieth day of March, 1856, entitled "An act to extend the powers of railroad companies" (No. 194), he has in his capacity aforesaid this day issued two thousand bonds of the New Orleans, Opelousas and Great Western Railroad Company, signed by him, and by Benjamin F. Flanders, treasurer of said company, redeemable on the first day of April, eighteen hundred and eighty-nine, for the sum of one thousand dollars ($1,000) each, bearing interest at the rate of eight per cent. per annum, payable semi-annually, in coupons of forty dollars, or eight pounds five shillings sterling each, the principal of said bonds being made payable at the office of the company, in the city of New Orleans, and the interest coupons in New Orleans, New York, or London, as he, the said president, may, by his endorsement, provide, and all which bonds have been severally marked "ne varietur," and countersigned by me, the said notary, for the purpose of more effectually identifying the same herewith.

Now, therefore, in consideration of the premises, and in order to secure the full, faithful, and punctual payment, and the redemption of each and all the said bonds (this day issued as aforesaid) to any future

holder or holders thereof, and to each and every one of them, when the same shall become due and payable, together with the interest accruing thereon, in the manner and at the periods of time hereinabove stipulated, as evidenced by the coupons attached to the said bonds respectively, payable on the first days of April and October of each year, the said "New Orleans, Opelousas and Great Western Railroad Company" do, by these
636 presents, by their president (the said William G. Hewes) grant in favor of E. J. Forstall or bearer, as well as in favor of all and every person and persons whomsoever who may become the holder or holders of said bonds or coupons, or any of them, a first mortgage, lien, or privilege upon the whole of the completed grand division of the railroad between Algiers (opposite the city of New Orleans) and Berwick's Bay, now in full operation, constructed by the said company in pursuance of their charter, and being a distance of eighty miles, together with the road-beds of the main track and branches, and also all the depots and lands specially appertaining to them; all the buildings, wharves, and all the equipments and franchises belonging and appertaining to this division of the road, herein mortgaged and referred to, and also all and singular the cars, locomotives, engines, wagons, machinery, fixtures, implements, utensils, rights of way and effects generally, of every nature and description whatsoever, in use upon the said division of the said railroad, or in any wise attached to or appertaining to the same, without any exception or reservation, as well as all such as shall or may hereafter at any time be placed upon or attached to the said division of the said railroad, whether for the purpose of replacing others removed therefrom, or from any other cause whatsoever, the said company promising, by their said president, not to alienate nor encumber, nor in any wise affect the same, or any part or portion thereof, to the prejudice of these presents.

By reference to the annexed certificates of the recorders of mortgages in and for the parishes of Orleans, Jefferson, Saint Charles, La Fourche, Interior, Assumption, Terre Bonne, and St. Marys, respectively traversed by the said division of the said railroad herein mortgaged, it will appear that there exists no mortgage or encumbrance whatsoever inscribed against the said division of the said railroad, franchises and appurtenances, nor upon any of the lands or property connected therewith owned by the said company.

And now, personally came and appeared the said Edmond J. Forstall, who, after having read the foregoing act of mortgage, declared that he does, by these presents, accept the same, as well for himself as for all and every other person or persons who may hereafter become the purchaser or purchasers, assignee or assignees, holder or holders, of the said bonds or any number thereof, or any of them, together with all the rights, privileges and benefits thereto belonging or in any wise appertaining.

Thus done and passed in my office, at the said city of New Orleans, in the presence of Edward G. Gottschalk and Forestier Brugier, witnesses, of lawful age, domiciliated in this city, who hereunto subscribe their names, together with the said parties and me, the said notary, on the first day of April, in the year of our Lord one thousand eight hundred and fifty-nine.

(Signed) WILLIAM G. HEWES, *President.*
" EDMOND G. FORSTALL.
" E. G. GOTTSCHALK.
" F. BRUGIER.
" S. MAGNER, *Not. Pub.*

STATE OF LOUISIANA,
City of New Orleans:

Be it known that this day, before me, Selim Magner, a notary public in and for this city and parish of New Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared
637 William G. Hewes, esq., of this city, president of the New Orleans, Opelousas and Great Western Railroad Company, a corporation duly organized under the laws of this State, herein acting in his said capacity by virtue of a resolution of the board of directors of said company, passed at their meeting of the 17th March, 1859, a certified copy of which resolution is annexed in the margin hereof for reference, of the one part, and Edmond J. Forstall, esq., of this city, of the second part; and the said Hewes declared that, whereas the said company executed a mortgage on the railroad of said company, its property, rights, privileges, franchises, and appurtenances, as a security for the payment of two thousand bonds of one thousand dollars each, issued by said company, and payable thirty years from this date, with interest at eight per cent. per annum, payable semi-annually, on the first day of April and the first day of October of each year, as per act passed before the undersigned notary on the date hereof, which mortgage was made in favor of him, the said E. J. Forstall, and any future holder or holders of said bonds, and was intended to enure to the benefit of any holder or holders of said bonds, or any of them as might at any time become beneficially interested in the security of such mortgage.

Now, therefore, in order to further secure the punctual payment of the interest of said bonds, represented by coupons attached thereto, payable semi-annually, and in order to facilitate their negotiability by furnishing guarantees of the punctual payment of said interest, the said company, in pursuance of said recited resolutions of the board of directors, does hereby contract and agree with the said E. J. Forstall, herein acting not only for himself, but in the interest of all persons who may be or become beneficially interested in the said bonds, each and every one of whom he subrogates in and to all his rights and actions under said act of this date, and under the present act, up to the amount of the interest of each and every one of said persons respectively, as follows, to wit:

1st. That the treasurer of the said company for the time being, or any other officers discharging the duties of treasurer, shall, on the last day of April next, and on the last day of every month until the final payment of said bonds, deposit in the Louisiana State Bank of this city, pro rata, an amount of money necessary to meet each semi-annual interest of the outstanding bonds of the company, to be entered as the "New Orleans, Opelousas and Great Western Railroad Company's interest account," and such additional amount as may be necessary to pay exchange and other expenses of placing funds at the place where the interest coupons may be payable; and the money thus deposited shall not be withdrawn by the said company or any officer thereof, but shall remain on deposit in said bank, and be by said bank exclusively applied to the payment of the interest coupons on said bonds and said expenses and exchange; and no payment shall be made by said bank out of said deposits, on the check of any person or persons, whomsoever, but the payments out of said deposits shall be made on presentation of said coupons as above provided, which shall be cancelled on payment and delivered by the said bank to the treasurer, taking his

receipt therefor, provided, that the said bank shall remit funds to meet at maturity all of said coupons payable in London or New York.

2d. That the said company shall have the right to select any of the chartered banks in this city for the purposes aforesaid, in case the charter of the Louisiana State Bank should expire prior to the payment of the interest coupons aforementioned, or in case the said bank should decline to continue said deposits before the time contemplated.

And to these presents personally came and appeared and in-
638 tervened Jean Martial Lapeyre, esquire, president of the said Louisiana State Bank, and acting herein by virtue of a resolution of the board of directors of the said bank, passed at their meeting of the 18th of March, 1859, a certified copy whereof is hereto annexed, who declared that the president, directors, and company of said bank do hereby take cognizance of the present act, and agree to receive and keep the above-mentioned deposits, and make the payments therein provided out of the same, in conformity hereto; provided, that should said bank decline to continue this arrangement, it shall be at liberty to do so after giving six months' notice to said railroad company; and the board of directors of said railroad company shall thereupon select another incorporated bank of this city to become the depositary of the funds under this act, which bank shall assumo all the obligations herein imposed on the Louisiana State Bank, and shall be entitled to exact the performance of all those imposed on the said company, its directors or officers.

Thus done and passed in my office at the said city of New Orleans, in the presence of Edward G. Gottschalk and Forester Brugier, witnesses of lawful age, domiciliated in this city, who hereunto sign their names together with the said parties and me, the said notary, on this first day of April, in the year of our Lord one thousand eight hundred and fifty-nine.

(Signed) WILLIAM G. HEWES, *President.*
" EDMOND J. FORSTALL.
" J. M. LAPEYRE, *President.*
" E. G. GOTTSCHALK.
" F. BRUGIER.
" S. MAGNER, *Not. Pub.*

Extract from the minutes.

LOUISIANA STATE BANK,
March 18, 1859.

Whereas the New Orleans, Opelousas and Great Western Railroad Company have selected this bank as the depositary of certain moneys for the purpose of paying the interest coupons attached to certain mortgage bonds to be issued by said company and to be secured by special mortgage by a notarial act.

Resolved that this bank accept of this deposit in accordance with the resolutions of the board of directors of the said company passed on the 17th day of March, 1859, and the president is hereby authorized to sign a contract with said company to that effect; provided that should the bank decline to continue this arrangement before the expiration of the time contemplated it shall give six months' previous notice of such intention to said railroad company; provided, also, that the bank shall be under no obligations to advance any money for the use of said com-

pany nor to allow any interest on any sums deposited by virtue of said resolutions of seventeenth March; and provided further that any expense, of whatever nature, the bank may have to incur to pay the interest coupons outside of New Orleans shall be reimbursed by the said railroad company.

A true copy.

Attest:

(Signed) C. F. RONDEAU, *Cashier.*

639 *Subpœna in chancery.—Issued April 5th*, 1869.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Charles Morgan, a citizen of the State of New York, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of May, 1869, then and there to answer a bill in chancery filed against him wherein the New Orleans, Opelousas and Great Western Railroad Company are complainants and said Charles Morgan is defendant.

Herein fail not, and have you then and there this writ, with your endorsement thereon how have you executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this fifth day of April, in the year of our Lord one thousand eight hundred and sixty-nine, and the 93d year of American Independence.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *Dy Clerk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of May, 1869, otherwise the bill may be taken pro confesso.

(Signed), D. URBAN, *Clerk*,
By F. B. VINOT, *Dy Clerk.*

Marshal's return.

Received April 6th, 1869, by the U. S. marshal, and on the seventeenth day of April, 1869, served a copy of within subpœna on Charles Morgan, defendant named herein, personally, at office, corner of Magazine and Natchez streets, in this city.

New Orleans, April 7th, 1869.

(Signed) S. W. REED,
Dy U. S. Marshal.

Entry at rules.—Extract from the chancery order docket, April rules, 1869.

Circuit court of the United States, district of Louisiana, at rules—April 5th, 1869, being the first day of the month.

On motion of M. M. Cohen, solicitor of the plaintiffs, and upon a submission of this bill, the court orders that notice of the motion for an

injunction be given to said Morgan, or his attorney; the motion to be heard on the sixteenth day of April, 1869, at 11 a. m.

(Signed) E. H. DURELL, *Judge.*

640 *Motion.—Extracts from the minutes of Friday, April 16th, 1869.*

THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company *vs.* CHARLES MORGAN. } No. 5817.

And now into court comes Charles Morgan, by Miles Taylor, and moves the court for leave to file in support of his opposition to granting the motion in this cause made for an injunction to issue as prayed in the bill of complaint against him filed therein, the two papers now presented, as follows:

1st. The affidavit of Charles A. Whitney, with the accompanying statement or certificate made by the clerk of the court, in his official capacity, on the 23d of February, 1869, in the case of Charles Morgan vs. The New Orleans, Opelousas and Great Western Railroad Company, No. 5788 of the docket of this court; and

2d. The return made by the marshal of the United States for the district of Louisiana of the service made in the New Orleans, Opelousas and Great Western Railroad Company, in the said case of Charles Morgan vs. The New Orleans, Opelousas and Great Western Railroad Company, No. 5788 of the docket of this court, on the day of , 1869.

Affidavit of Charles A. Whitney, referred to in the foregoing motion.—Filed April 16th, 1869.

U. S. circuit court, district of Louisiana.

THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company *vs.* CHARLES MORGAN. } No. 5817.

Charles A. Whitney, of the city of New Orleans, to me well known, being duly sworn, deposes and says:

That he is a member of the firm of Charles A. Whitney & Company, agents of Charles Morgan, plaintiff in the suit of Charles Morgan vs. the New Orleans, Opelousas and Great Western Railroad Company, No. 5788 of the docket of the circuit court of the United States for the district of Louisiana. That acting in his capacity of agent of the said Charles Morgan, he placed in the hands and possession of the clerk of the said circuit court on the twenty-third day of February (the day when the petition in the said case was filed in the said circuit court), the bonds and the interest coupons issued by the said New Orleans, Opelousas and Great Western Railroad Company, which are declared in the petition filed in the said cause, No. 5788, on that day to be annexed for reference, and made part of the said petition and to be set forth, enumerated, and described in the book filed with the said petition, and marked D; and that on the same day, to wit, the twenty-third day of February, 1869, the clerk of the said court gave a statement in writing, signed by him in his official capacity, that the said bonds and coupons

of interest and various other papers had been filed or deposited on that day with the clerk of the said court, as annexed to and made a part of the said petition aforesaid, by Miles Taylor, attorney for the said
641 Charles Morgan, as will be more fully seen by reference to the said statement, which is hereto annexed as part of this affidavit.

(Signed) CHAS. A. WHITNEY.

Sworn to and subscribed before me April 16th, 1869.

(Signed) F. B. VINOT,
D'y Clerk.

Statement of certificate of the clerk referred to in the foregoing motion and affidavit to be found transcribed at page 32.

The return made by the marshal of service on the New Orleans, Opelousas and Great Western Railroad Company, in the case of Charles Morgan versus The New Orleans, Opelousas and Great Western Railroad Company, filed in this case on the 16th April, 1869, and referred to in the foregoing motion.

United States circuit court.

CHARLES MORGAN
vs.
THE NEW ORLEANS, OPELOUSAS AND GREAT WESTERN RAILROAD COMPANY. } No. 5788.

To the New Orleans, Opelousas and Great Western Railroad Company:

By virtue of a writ of seizure and sale issued and to me directed by the honorable circuit court of the United States for the fifth circuit and district of Louisiana, in the above-entitled suit, I hereby notify you to pay into my hands, within three days from the service of this notice, three hundred and sixteen thousand eight hundred and forty dollars, due to the plaintiff, and the costs; and that in default of such payment I shall seize and sell the property described in the accompanying petition and order served herewith, to satisfy the mortgage debt, agreeably to the said order and according to law.

(Signed) JOHN FAHY,
D'y Marshal.

U. S. MARSHAL'S OFFICE, *New Orleans, March* 31, 1869.

Marshal's return thereon.

Notice of demand issued March 31, 1869, and on the same day served a copy of the within notice and copy of the petition and order in the said case accompanying same, on the New Orleans, Opelousas and Great Western Railroad Company, by delivering them to A. B. Seger, president of said company, at their domicil, No. 69 Canal street, in the city of New Orleans.

New Orleans, March 31, 1869.

(Signed) JOHN FAHY,
D'y Marshal.

Hearing and continuance of rule.—Extract from minutes of Friday, April 16, 1869.

THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company *vs.* CHARLES MORGAN. } No. 5817.

The rule taken by complainant on 5th instant came up.—M. M. Cohen and Campbell, Spofford & Campbell, for complainant; Miles Taylor, for defendant.

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When, after hearing argument, the same is continued till to-morrow at 11 a. m.

Hearing and continuance of rule.—Extract from the minutes of Saturday, April 17, 1869.

THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company *vs.* CHARLES MORGAN. } No. 5817.

The rule in this case was resumed, and, after hearing further evidence, continued till Wednesday, 21st instant, at 11 a. m.

Motion and order fixing rule.—Extract from the minutes of Friday, April 23, 1869.

THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company *vs.* CHARLES MORGAN. } No. 5817.

On motion of Miles Taylor, solicitor for the defendant, ordered that the rule taken by complainant on 5th instant be set for argument on Thursday, 29th instant, at 11 a. m., and that said complainant be notified hereof.

Marshal's return.

Received April 24, 1869, by the United States marshal, and on same day of April, 1869, served copy of within motion, etc., on M. M. Cohen, attorney named, personally, at United States court-room in this city; and on same day of April, 1869, served copy of same on Campbell, Spofford & Campbell, attorneys named, in hands of J. A. Campbell, member of firm, at United States court-room in this city.

New Orleans, April 27, 1869.

(Signed) J. W. SAWYER,
D'y U. S. Marshal.

Hearing and submission of rule.—Extract from the minutes of Tuesday, April 27, 1869.

THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company *vs.* CHARLES MORGAN. } No. 5817.

The rule pending in this case was taken up—Campbell, Spofford & Campbell and M. M. Cohen for plaintiffs in rule; Miles Taylor for defendant in rule—and after hearing argument, the court took time to advise, and instructed the counsel to furnish printed briefs within the next ten days.

643 *Entry at rules.—Extract from the chancery order docket.*

May rules, 1869.—Monday, 3d.

THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company *vs.* CHARLES MORGAN. } No. 5817.

The defendant, by his solicitor, Miles Taylor, esq., this day 'ade his appearance to complainant's bill.

Judgment.—Extract from judgment docket.

United States circuit court, fifth circuit and district of Louisiana.—April term, 1869.

NEW ORLEANS, *Monday, May* 24, 1869.

Court met pursuant to adjournment. Present: Hon. E. H. Durell, district judge.

THE NEW ORLEANS, OPELOUSAS AND GREAT Western Railroad Company *vs.* CHARLES MORGAN. } No. 5817.

For reasons orally assigned, it is ordered and decreed that the prayer for an injunction be denied, with costs.

Judgment rendered May 24, 1869. Judgment signed May 28, 1869.

(Signed) E. H. DURELL, *Judge.*

United States of America, circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE:

I, Dominick Urban, clerk of the circuit court of the United States for fifth circuit and district of Louisiana, do hereby certify that the foregoing 124 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Charles Morgan vs. The New Orleans, Opelousas and Great Western Railroad Company, No. 5788 of

the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this thirtieth day of November, A. D. 1869.

[SEAL.] (Signed) D. URBAN, *Clerk.*

[Five-cent internal revenue stamp affixed and canceled.]

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Dominick Urban, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said
644 certificate, and is now, the clerk of said court; that said certificate is in due form of law; and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 30th day of November, A. D. 1869.

(Signed) E. H. DURELL, *Judge.*

[Five-cent internal revenue stamp affixed and canceled.]

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the circuit court before you, or one of you, between the New Orleans, Opelousas and Great Western Railroad Company and Charles Morgan, a manifest error hath happened, to the great damage of the said New Orleans, Opelousas and Great Western Railroad Company, as by their complaint appears; we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 24th day of May, in the year of Lord one thousand eight hundred and sixty-nine.

(Signed) D. URBAN,
Clerk of the United States Circuit Court for District of Louisiana.

(Indorsed:) United States circuit court. No. 5788. Charles Morgan vs. The New Orleans, Opelousas and Great Western Railroad Company. Writ of error.

Filed May 24, 1869.

F. B. VINOT, *D'y Clerk.*

THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Charles Morgan, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the New Orleans, Opelousas and Great Western Railroad Company are plaintiffs in error and you are defendant, to show cause, if any there be, why the judgment
645 rendered against the said plaintiffs, as in said writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this eighth day of July, in the year of our Lord one thousand eight hundred and sixty-nine.

(Signed) E. H. DURELL, *Judge.*

(Indorsed:) United States circuit court. No. 5788. The New Orleans, Opelousas and Great Western Railroad Company, plaintiffs in error, vs. Charles Morgan. Citation.

Marshal's return.

Served on the ninth day of July, A. D. 1869, on Miles Taylor, attorney for Charles Morgan, in the hall of custom-house.

S. W. REED,
D'y U. S. Marshal.

(Indorsement on cover:) No. 321. The New Orleans, Opelousas and Great Western Railroad Company, plaintiffs in error, vs. Charles Morgan. Louisiana C. C. U. S.
Filed December 6th, 1869.

646 *Order appointing expert.—Extract from the minutes, Monday, July 3, 1871.*

The court this day directed, for the reasons orally assigned in open court, that the following order be inserted in the minutes in the following entitled and numbered causes:

It is ordered by the court that J. D. Taylor be appointed an expert to prepare and have printed the records in the following entitled and numbered causes, viz:

No. 4.—N. O., M. and C. R. R. Co. vs. City of New Orleans et als.
No. 21.—Same vs. Pontchartrain Railroad Company.
No. 27.—Same vs. City of New Orleans.
No. 19.—Same vs. Same.
No. 345.—State of Louisiana vs. City of New Orleans.
No. 116.—Pontchartrain R. R. Co. vs. Same.

Motion to tax fee.—Filed November 6, 1871.

State of Louisiana, eighth district court for the parish of Orleans.

N. O., M. AND C. R. R. Co. vs. CITY OF NEW ORLEANS ET ALS. } No. 4.

On motion of C. S. Rice, of counsel for J. D. Taylor, appointed expert herein by the court, and on filing printed copy of record in this case:

It is ordered by the court that a fee of two hundred and thirty-eight $\frac{20}{100}$ dollars be allowed said expert for transcribing, compiling, and printing the record in this case, and that the same be taxed as costs.

Reasons for judgment.—Filed December 5, 1871.

State of Louisiana, eighth district court for the parish of Orleans.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS., CHARLES Morgan, intervenor. } No. 4.

The issues in this case are determined by the decision of the suit of this plaintiff against the City of New Orleans et als., No. 19, recently decided.

This action was commenced (in the fifth district court) by an injunction to restrain the city from selling to Charles Morgan, as the owner of the franchises of the New Orleans, Opelousas and Great Western Railroad, the square of ground known as "27 A," bounded by Girod, Notre Dame, Water, and Pilié streets.

The fifteenth section of the act approved February 17, 1869 (acts 1869, No. 26), contained a grant in this language: "And there is
647 hereby granted to the said company the right to locate, construct, maintain, and use a passenger depot, with offices and apartments suitable for its legitimate business, upon that part or portion of the levee or streets and grounds in the city of New Orleans bounded by Canal, Delta and Poydras streets, and a line parallel to and one hundred and fifty feet from Delta street; and for the construction of a freight depot, and for other purposes of its legitimate business, upon that part or portion of the levee or streets in said city bounded by Girod, Water, and Calliope streets, and a line parallel to and two hundred and ninety feet easterly from Water street."

In the month of July, 1869, subsequent to this grant, the city proposed to sell the square "27 A," aforesaid, to Morgan, and this injunction suit followed.

By the fifth and sixth sections of the act approved February 21, 1870 (acts of 1870, No. 31), the grants aforesaid were repeated and confirmed, the levee in front thereof was specially and formally set aside to public use, and all ordinances enacted by the city calculated to contravene the grant to the plaintiff were declared null and inoperative.

Charles Morgan, intervening, claims to be entitled to perfect his sale with the city. He avers that the square of ground is the private property of the municipal corporation from which he has an inchoate sale. He denies that the State has any right or title to the property, or any control over the same, except by the exercise of the power of eminent domain, and that the act of the legislature assuming to grant the same to plaintiff is a law impairing the obligation of contracts and divesting vested rights.

In discussing the case No. 19 aforesaid, it was found that this batture is a locus publicus; that the City of New Orleans has private property therein, and no power whatever to change its destination or to dispose of it without the authority of an act of the legislature of the State. It was also ascertained that though the City of New Orleans has a local and subordinate power to administer the use of this public place, the

paramount authority to control and regulate the use of the loci publici within the municipal limits resides with the State.

No act of the legislature has been exhibited authorizing the city to sell this square of ground, therefore, the ordinance by which it was proposed sell the same to the intervenor, Morgan, can have no legal effect.

As was determined in the case aforesaid, the act authorizing the occupancy and use of the place in dispute was an application of the locus publicus to a legitimate public use, and a proper exercise of the legislative power to administer the public domain.

The intervenor in this case and the City of New Orleans, in this and other branches of this legislation, have urged that the acts of the legislature granting the Chattanooga Railroad the right to enter upon the levee convey to that company a full and indefeasible title to the realty; that the State has no power to give to a private individual the property in the public streets and places.

Of this last proposition there is no question. But a candid examination of the language of the several acts does not justify the conclusion that such a grant was made or was intended to be made. No words are used which are usually employed in acts translative of title. It therefore seems clear that the grants cannot be regarded in any other light than as a mere license—a revocable license—for the railroad company to enter upon the public streets and quays, and to use them for what has been decided to be a public purpose.

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For the reasons expressed in the suit above cited, and for these additional reasons, judgment will be given for the plaintiff, the New Orleans, Mobile and Chattanooga Railroad.

The injunction will be perpetuated.

The intervention of Charles Morgan will be dismissed.

The city of New Orleans will pay cost.

Reasons for judgment in case No. 19.—*Delivered and filed December 6th* 1871.

By an act of the general assembly of Louisiana approved by the governor August 19, 1868, (acts 1868, p. 28), the New Orleans, Mobile and Chattanooga Railroad Company, a corporation, in the State of Alabama, was recognized and authorized to exercise and enjoy its corporate powers and franchises within this State. Under the provisions of this statute, and of several subsequent acts, the company was empowered to build and maintain a railroad from a point on the borders of Alabama and Louisiana upon a line from Mobile to New Orleans, through the latter city, crossing the Mississippi River by ferry, and westward to the State of Texas. The name of the corporation was subsequently changed, and it is now known as the New Orleans, Mobile and Texas Railroad Company. Acts 1871, p. 211.

The first act cited authorized the company to run the road along and upon the levee in front of the city of New Orleans. Another act (No. 47 of 1869) empowered the company to enclose and use a portion of the batture extending about three hundred and fifty-five feet from Calliope street down the river. By another act (No. 26 of 1869) the company was granted the right to build a passenger depot on the levee, in that portion bounded by Canal, Delta, and Poydras streets, and a line parallel to and one hundred and fifty feet easterly from Delta street; "and for the construction of a freight depot, and for other purposes of its legitimate business, to inclose and occupy the blocks of ground,

parts of streets and portions of levee in said city, bounded by Girod, Water, and Calliope streets, and a line parallel to and two hundred and ninety feet easterly from Water street." This grant was made with the proviso that the company shall first acquire any private property within the boundary described. Still another statute (No. 31 of 1870) confirmed all grants before made, but changed the line of the railroad leading out of the city toward Mobile. The line first designated was down the levee to the junction of Spain street; thence by a curved line to Enghien street; thence along and upon Enghien street and Lafayette avenue to Claiborne street. Section 1, act No. 28, 1868.

The new course was from the levee by a curved line into Elysian Fields street, and along two central banquettes or walks in said street, being two strips of ground twelve feet in width, one upon each side of and adjoining the land owned by the Pontchartrain Railroad Company in the central portion of the street. Section 1, act No. 31, 1870.

Section six of this act provides "that all that portion of the levee or streets and grounds in the city of New Orleans lying within the following named limits, viz: The southerly (or upper) line of Canal
649 street, from the Mississippi River to the easterly line of Water street, from the easterly line of Water street from the southerly line of Canal street to the southerly (or upper) line of Girod street, the southerly line of Girod street, from the easterly line of Water street to the easterly line of the lands designated for the location of the freight depot of the company, the eastly line of said depot lands, from the southerly lines of Girod street to the northerly (or lower) line of the batture rights owned by said company, the northerly (or lower) line of said batture rights from said depot lands to the Mississippi River, and the Mississippi River, from the northerly (or lower) line of said batture rights to the southerly line of Canal street, is hereby expressly dedicatedto public use, and shall forever remain open for such use, and no part of said lands, or of the accretions and wharf in front of the same, shall ever be inclosed or built upon or granted for ferry landings, or exclusively appropriated or used by any individual or individuals, corporation or corporations, or by the municipal authorities of the city of New Orleans.

This company, however, was granted the right to construct, maintain, and use across or upon said lands or any part thereof, such railroad tracks, turnouts and switches, from its main track on Water street, as might be necessary for purposes of egress from or ingress to its depots. Any act of the city authorities calculated to contravene this grant was stricken with nullity.

The several acts above cited contain many other grants of aid, privileges and franchises to the said company, but the issues in this case, and in several others to be now decided, only involve the validity of the acts in so far as they authorize the occupancy of the streets, levees and lands hereinbefore detailed, and in the manner set forth.

In the course of this litigation, the City of New Orleans urges the unconstitutionality and invalidity of the legislative warrant for the construction of the railway along and upon the levee in front of the city, and especially attacks the grant to the company of the right to inclose and use the batture at the foot of Calliope street. In this contest the city is supported by Mr. Charles Morgan, owner of the New Orleans, Opelousas and Great Western Railroad. Mr. Morgan, joined with the city, claims as against the plaintiff the right to the square of ground hereinbefore described, bounded by Girod, Water, and Notre Dame streets, known in this litigation as square "27A."

The Pontchartrain Railroad Company, a corporation in this city, joined with the city, contest with the company, plaintiff, the right to lay its tracks upon the strips of land in Elysian Fields street, hereinbefore described; and finally, certain front proprietors seek to prevent the construction of the road upon the levee in front of property owned by them.

This suit involves most of these questions. The New Orleans, Mobile and Chattanooga Railroad Company sought and obtained a writ of injunction restraining the City of New Orleans and Mr. Morgan and his agents from interfering with the company, plaintiff, in the construction of its road in conformity with the maps filed with the petition, marking the route as defined in the several acts hereinbefore cited. The Pontchartrain Railroad Company was also made a defendant, and restrained by injunction from interfering with plaintiff in the construction of the road along Elysian Fields street.

The case was presented to the court with great care and consummate ability by the several learned attorneys representing the different parties in interest. There is much documentary proof and oral evi-
650 dence, together with numerous maps and plans; but the questions of fact are so intimately connected with the legal issues that they need not be considered separately.

There are three distinct issues of law presented for consideration:

First. It is maintained by the City of New Orleans, as against the railroad company, plaintiff, that levee and batture in front of that portion of the city lying between Canal street and Calliope street is vested in the municipal corporation; that this ownership is full and complete, and that the grants by the legislature to the company of the right to enter upon and use the same are acts divesting the vested rights of the city, and therefore unconstitutional and void. It is also distinctly maintained by the city and the other defendants that municipal authorities have the right to determine and regulate the use of the streets and other public places upon which the company claims to be entitled to enter.

Second. It is maintained by the defendants that the levee or public quay in front of the old city of New Orleans, between Canal and Elysian Fields streets was originally dedicated by the sovereign of France to public use; that the municipal authorities are the administrators of this public use, and that the acts of the assembly assuming to divert the locus publicus in question to a use not originally intended are void, because they divest the vested rights of the community.

Third. The Pontchartrain Railroad Company, one of the defendants (seconded and sustained by the City of New Orleans), claims the right, by virtue of its charter and an ordinance of the city, to occupy and use the two strips of lands on Elysian Fields streets hereinbefore described, upon which the company, plaintiff, claims the right to lay its tracks. This issue involves mixed questions of fact and law, of ownership, of realty, and of the question of the paramount authority to administer the public place in dispute.

1. There have been few instances of litigation more notable than that involving the right of ownership in and to the batture in front of the city of New Orleans. It has occupied the attention of the courts of this State, and of the Territory, for nearly seventy years. The Supreme Court of the United States has passed upon certain of the issues, and in the elucidation of the questions involved several of the master minds of the country have devoted their most earnest attention. President Jefferson was engaged in a violent personal controversy with

Edward Livingston, who was esteemed among the foremost publicists of the age. The importance of, and interest in this litigation, resulted from the peculiar character of the property in dispute. At this particular point on the Mississippi the bend of the river and the course of the currents cause constant sedimentary deposits, so that during the period of a hundred years the accretions have amounted to many squares of very valuable land. To whom should this product of the river belong?

There were three theories: The City of New Orleans claimed it as an accretion to the public streets and levees or quays fronting upon the stream.

The front proprietors claim it as an accretion to their property, maintaining that their riparian rights were not affected by reason of their land being within the municipality, or by the fact that the banks of the stream were subject to a servitude in favor of the public, and was separated from their property by a public street.

And the United States Government claimed the batture in front of the city, as the successor of the sovereign of France.

651 The following extract from admissions of counsel (Rec. page 50) establishes the history of the property above Canal street:

"For the purposes of this trial, it is admitted that the King of France, prior to the year 1763, granted to the order of Jesuits, for a plantation, certain property lying on the Mississippi River above Canal street, having thirty-two arpents front on the Mississippi River, and running back to a depth of about fifty arpents; and that, for the same purpose, he granted to various other persons property lying above the aforesaid thirty-two arpents.

"That in 1763 the Jesuits' plantation was confiscated by the French Goverhment, divided and sold; the first subdivision above Canal street, sold as aforesaid, contained, say seven arpents face au fleuve, and five other equal subdivisions were sold in like manner.

"That Gravier acquired the first subdivision about the year 1788; the second, being immediately above Gravier, was acquired by Delord Sarpy; the boundary line between said claim being now designated *by* Delord street. That Gravier divided his property in 1788 into squares and lots, and annexed them to the city as "Suburb Ste. Marie." Sarpy converted his property from rural into urban in 1806.

"That the locus in quo above Canal street is embraced within the Gravier and Sarpy claims. That when the aforesaid change from rural to urban was made, the street now called Tchoupitoulas was the nearest street to the river; that at that time there was a batture in front of Tchoupitoulas street; that the same, without any form or ceremony, was, as early as 1788, dedicated to public use, and since that time has been used by the public as a locus publicus."

While it is intensely interesting to follow the history of this most celebrated litigation; to read and admire the displays of classic learning and eloquence of both bench and bar, it is, as to this suit, utterly unprofitable. The questions of ownership involved have been definitely and finally settled by the courts of last resort. The accretions to the batture in front of the city of New Orleans belong to the front riparian proprietors (18 La. 123.)

But this case has to do with an incident, the most important incident of the batture litigation. In 1807 the territorial court affirmed the title of the front proprietors to the batture. This victory proved, however, comparatively barren to Livingston and his associates, for though they owned the batture they could not use it, because the city of New Or-

leans refused to advance the levee or street, and the owners had no authority to do so. In 1819 the Supreme Court rendered a decision in the case of Morgan vs. Livingston et al. (6 M. 19), in which the titles of Livingston and others, transferees of Gravier, were questioned, if not entirely overthrown. These facts resulted in a compromise with the city of New Orleans, which was entered into September 20, 1820. By this act Edward Livingston and his seven co-front owners of the suburb St. Mary gave the city the batture. They also gave the right to extend the streets up the levee, bound themselves to build the wharves in front of their property, and presented to the city enough cash to construct a market upon the property. The act first recites that the donors, "wishing to favor the public in the use of the river side which lies in front of said batture, and to facilitate the communication between the streets which will terminate at that place, have, by these presents, made a donation inter vivos and irrevocable, and in the best forms in which a donation may be valid, to the mayor, aldermen and inhabitants of New Orleans." (Rec. p. 59.)

652 This act of compromise, or donation as it was called at the time, was examined and passed upon by the Supreme Court in the case of Delabigarre vs. Second Municipality (3 An., 230.) After reviewing the facts and circumstances attending the act of donation, the court held that it was no donation, though having the form, but a compromise, subject only to the rules applicable to a commutative contract. It was a stipulation, though carefully disguised, by which the public obtained the existing batture, with the right to future accretions and other advantages named, in consideration of letting Mr. Livingston and his associates alone in what they possessed.

The compromise subsequently received the sanction of the legislature. In 1836, in an act amending the charter of the city (Acts 1836, page 28, section 11), it was provided "that no disposition shall ever be made of the batture in front of the faubourg St. Mary in violation of the transaction or compromise in relation to said batture, entered into," etc., "and that the municipality of the upper section of the city of New Orleans shall not in any manner impede or obstruct the inhabitants of any portion of the city of New Orleans in the free use and enjoyment of any portion of their rights on said batture."

As the years rolled on and left their history, so the currents of the changing river swept by and deposited their sediment. The city grew in commercial importance, but its highway kept receding from the lines of business. The width of the landing became inconvenient. But the place was a locus publicus. The city could not sell the property nor build upon it. The State alone could change its destination. Accordingly, in 1850, the legislature passed a law (Acts of 1850, No. 257), by which the clause in the act of 1836 was repealed. The council of municipality No. 2 was then authorized to lay off two streets between New Levee street and the river. It was required that the batture in front of the new streets should be left open, and so kept, for the accommodation of the public and the convenience of commerce. It was further provided that in the event of an agreement between the original parties to the compromise, the municipality might sell all the batture not reserved as above for the accommodation of the public and the convenience of commerce.

This act resulted in what is called the compromise of 1851. (Record, p. 67.)

The survivors and representatives of the parties to the compromise of 1820 made a notarial act with a committee of the council, by which,

after reciting the inconveniences to commerce, etc., they agreed to alter the destination and authorize the sale of certain specified portions of the batture in question. The proceeds were to be divided in three parts, one-third to the representatives of the original donors; one-third to a sinking fund, in conformity to the act of 1850, and the remaining third to the treasury of the municipality.

The following clause in this act occurs:

"And that all the portion of the batture between Delta street and the river Mississippi, above Lafayette street to the line of Montgomery's property, and all that portion of the batture between Front street and the river Mississippi, from Lafayette street down to Canal street, shall be, and is hereby, vested in perpetuity and full ownership in said municipality No. 2, in favor of whom the appearers to this act hereby cede and relinquish forever all their claims in and to the said batture, as well as every enlargement thereof, or accretion thereto, by new formations."

The city now makes this stipulation one of the grounds for
653 claiming unlimited powers of control over the property in contest. But this so-called compromise is only referred to because the counsel for the city lays so much stress upon it. It seems to be, in the opinion of the supreme court, a dead letter, though made upon the warrant of an act of the legislature. In the case of Parish et al. vs. Municipality No. 2 et al. (8 An., 145), the court held that the stipulation in the compromise of 1820, forbidding the city to alienate or build upon the batture thereby dedicated to the public, was not binding upon the State, by whose sovereign power the destination of this locus publicus might be changed. The court said that it would give full effect to the act of 1850, in so far as it changed the destination of a portion of the batture, and authorized the sale of it, but the act was held to be void in so far as it recognized any legal rights in favor of the parties to the compromise of 1820. The effect of this decision was to hold that the so-called compromise of 1850 was of no effect, except in so far as it witnessed a handsome donation from the municipality to the representatives of the parties to the compromise of 1820.

Without the overshadowing authorization of an act of the legislature, the City of New Orleans has had no power, from 1820 until now, to dispose of a square foot of the batture in front of the suburb St. Mary. In the case of Delabigarre, reference is made to an ordinance passed by the municipality ordering a portion of the batture to be sold. The court characterized this act as a glaring usurpation of power, from which no legal effects could result, and added that it was proper to state that the attempt was not persevered in.

It results from these considerations that the batture in front of the suburb St. Mary, so-called, is public property and not the private property of the municipal corporation of the city of New Orleans. (Civil Code, 458.)

This leads to an examination of the power of the State, by legislative act, to regulate the use of this locus publicus.

The counsel for the City of New Orleans and the other defendants insist that the municipal government has the sole power of controlling the uses of the streets, quays, and other public places within the municipal limits; that the legislative acts divesting the city of such control are laws divesting vested rights, and therefore void.

In the brief for the City of New Orleans occurs the following expression: "We desire to keep in mind the distinction which clearly exists between the public and the City of New Orleans, the one, if we may so

term it, being a juridical being, represented by the city, and the other a municipal organization, incorporated by law.

There is, indeed, a distinction between the public and the municipal corporation, but it is much broader and very different than is indicated in the language quoted. The public is constituted of the free people—the citizens of the Commonwealth, and those strangers to whom the Commonwealth grants its freedom. The public is not represented by any municipal government, but by the authorities constituted in the organization of the State. If this distinction is kept in mind, the legal question now being considered will be solved without difficulty.

There is no question but that the City of New Orleans has the power to administer the use of the river banks and the batture (18 L., 278). The city may erect wharves (6 R., 349); may remove nuisances or obstructions from the streets or other loci publici (1 M., 187; 4 M., 10; 3 L., 563). So the city has full power to regulate and improve the
654 streets, and may grant the right of way to railways (14 A., 842).

These powers correspond to those vested in every incorporated city in the land.

But the power of the municipal corporation to regulate the use of the streets and other public places is subordinated to the paramount authority of the State. "The fee of the streets of a city, where it has been acquired by the municipality under the right of eminent domain, becomes public trust for general purposes, and is under the unqualified control of the legislature, and any legislative appropriation of it to public use is not to be regarded as the appropriation of private property, so as to require compensation to the city or municipality to render it constitutional." (Redfield on Railways, vol. 1, p. 259, citing 27 N. G. 188 and 47; Penn. 325.)

In this case it was held that the city of Philadelphia exercised a portion of the public right of eminent domain in respect to the streets within its limits, subject only to the higher control of the State and the use of the people. (Cooley Constitutional Limitations, 208.)

The correct doctrine would seem to be that under the power granted in the charters of the cities, the local authorities may make all regulations necessary for the control of the public ways and places within the corporate limits, subject always to the limitations that the municipal government cannot change the destination nor divert to private use the loci publici. But when the legislature of the State makes a grant or enacts a regulation within the limits of a city, such grant or regulation is paramount to any grant or regulation made or to be made by the municipal corporation. In presence of the greater power, the lesser is abated.

But it is urged in this case that the several acts of the legislature granting to the New Orleans, Mobile and Chattanooga Railroad Company the right to lay their tracks along the line and upon the batture property have the effect of diverting the public property in question to a private purpose, or at least to a purpose different from that to which it was originally dedicated. They insist that such diversion cannot be effected under the pretense of regulating the use of the locus publicus, but only for the exercise of the powers of eminent domain, and after compensation granted.

The doctrine cited from the case of New Orleans vs. The United States (10 Peters,) is, of course, beyond controversy. The inhabitants of a town cannot be deprived by the sovereign of the streets essential to the enjoyment of their property, unless it be expropriated after compensation made. But it is equally well settled in this country that the

grant of the right to run a railroad through a public street or highway is an application of such property to the use of the public. (Redfield on Railways, section 19; 27 N. Y. 188.)

The decisions are conflicting as to the right of abutting proprietors to demand compensation. It would seem to depend upon the special circumstances of the case. At all events that question does not arise in this case, for the city is not the attorney in fact of the property-holders along the levee.

Another consideration: It does not lie in the mouth of the defendants to complain of the locality of this grant, for the evidence shows that the city council has assumed the right to permit the construction of the Pontchartrain Railway along the same public place.

Evidence was adduced to show that the construction of the plaintiff's road along the batture in front of the city is calculated to pre-
655 vent the landing of steamboats; to drive them out of this trade, and, ultimately, to destroy the commerce of New Orleans.

A consideration of the questions decided renders it doubtful whether the court could interfere in this case, even though the proof established the theory of the defendants. But the exhibit of maps and the evidence taken does justify the fears that the construction of the railroad through the front of New Orleans to Texas will entirely destroy the commercial importance of the city. Men and corporations alike are apt to be wedded to the past. It is not unnatural, therefore, or unexpected that the steamboatmen should think that this new avenue of trade is destined to destroy the old. When steamboats first began to ply the river flatboatmen complained bitterly that their constitutional rights had been impaired.

The conclusion follows that the several acts of the general assembly upon which the plaintiff relies do not impair or violate the legal or constitutional rights of the City of New Orleans, or of the other defendants, in and to the batture in front of the old faubourg St. Mary.

2. The decision of the first question of law in this case practically determines the second, viz: The validity of the grant to the plaintiff of the right to lay its tracks along the levee in front of the old city of New Orleans, from Canal to Elysian Fields street. The decision of the Supreme Court of the United States (10 Peters), and the admissions in the record (p. 51) determine beyond question that this batture is a locus publicus in every sense. The site was granted by the King of France to the "Western Company" in 1717. When the city was laid out, in 1724, the quay in question was formally dedicated to public use by the maps and surveys. It has remained a locus publicus from that time to this, though by authority of the legislature the streets have been advanced nearer the river.

This batture being a public place, its use and regulation is under the paramount control of the State.

3. The third and last issue in this case is between the Pontchartrain Railroad Company and the plaintiff, in relation to the grant of the right to construct the road upon and along two central banquettes or walks in Elysian Fields street. (Sec. 1, act No. 31, 1870.) The following is the language of the act:

"That the said company be, and is hereby, authorized and empowered to locate, construct, maintain, and use for the passage of its engines and cars, the tracks of its railroads, (with the requisite curves to and from the same), from the levee to the line designated in the said ordinances of the city of New Orleans, for the extension of Claiborne street, along and upon the portions of Elysian Fields street, and intervening

streets, originally designated for the two central banquettes or walks in Elysian Fields street, the said banquettes being two strips of ground twelve feet in width, one upon each side of and adjoining the land said to be owned by the Pontchartrain Railroad Company in the central portion of said street."

The act further presumes to strike with nullity any ordinance of the city, or any act of any person or judge calculated to prevent the occupancy of these strips of land.

In the supplemental petition of the plaintiff (Rec. p. 17), it is alleged that the Pontchartrain Company have no title to the central portion of Elysian Fields street occupied by its road, or to the banquettes upon either side.

656 In the answer of the Pontchartrain Company (Rec. p. 121), that corporation sets up its charter granted January 20, 1830, authorizing the construction of the road to Lake Pontchartrain, and its extension to any point in the city of New Orleans, after obtaining the consent of the municipality. The said defendant also sets up an ordinance, passed by the city of New Orleans, March 15, 1830, by which the company was granted the right to construct its road upon the two strips of land described. This defendant then insists that the "grants of the right of way, and use of ground as aforesaid, by the State and city * * * are contracts within the meaning of the Constitution of the United States, and that all their rights, franchises, and privileges in the premises are inviolable by State authority."

The evidence in the record shows that in the centre of what is now Elysian Fields street, there was formerly a canal, which was, in 1805, the private property of Bernard Marigny, who owned a plantation through which the canal, or rather proposed canal was to run. In April, 1805, Mr. Marigny was authorized by the municipality to constitute his plantation into a faubourg, which was done. In 1805 a notarial act was made between the city and Marigny, in which he donated certain lands to the city for streets and squares, and especially fifty feet upon each side of the canal for streets and banquettes, reserving fifty feet for the canal. His canal was to extend from the river back to Florida avenue, thence by an elbow to Bayou St. John. Subsequently he, Marigny, released to the city the right to construct a levee and public road in front of the reservation of fifty feet.

In 1830, February 23, the Pontchartrain Company bought from Marigny this property for a valuable consideration. It is now the private property of that corporation. Any attempt of the legislature to authorize the plaintiff to enter upon this property, unless after expropriation, would be clearly invalid.

But the defendant places most stress upon the invalidity of the act authorizing the plaintiff to occupy the strips of land or banquettes hereinbefore described.

An examination of the authorities and a consideration of the principles hereinbefore ascertained, leads to the conclusion that it was within the legislative power to authorize the railroad company, plaintiff, to occupy the public places in question without violating the constitutional rights of the other company. It is a settled doctrine that the State cannot completely divest itself of any of its sovereign powers. Among these powers is that of police, which includes the authority to regulate the uses of the public places. If the State cannot barter away its paramount control over such uses, certainly a municipal corporation, exercising those powers in a local and subordinate manner, cannot. (1 Redfield, 259; Cooley on Constitutional Limitations, 283, note 1, and authorities.)

The ordinance of March 15, 1830, was annulled by the provisions of the act No. 31 of 1870. This exercise of legislative authority is not subject to the imputation of being an act impairing the obligations of a contract, or divesting vested rights. If any contract resulted between the City of New Orleans and the Pontchartrain Railroad Company, by the ordinance of 1830, there was an implied condition that the grant was at all times subject to the superior control of the legislature.

The City of New Orleans recognized this authority of the State. After the passage of the law aforesaid, February 21, 1870, the city council adopted an ordinance, July 26, 1870, withdrawing the
657 permission to the Pontchartrain Company to occupy the banquettes in dispute.

But the maps and plans in evidence, and the testimony of several witnesses, establish that the plaintiff, in constructing its road by a curved line from the levee into Elysian Fields street, has laid its tracks across a portion of the private property of the Pontchartrain Railroad Company. This act should render the plaintiff liable for damages. The track must be removed, unless the property is expropriated and paid for.

The plaintiff prays for damages against the City of New Orleans, and the other defendants. No evidence has been offered to substantiate the claim.

It is not necessary to sum up in conclusion. Judgment will be entered for plaintiff, the New Orleans, Mobile and Chattanooga Railroad Company, perpetuating the injunctions issued upon the original and supplemental petitions.

The plaintiff's claim for damages will be dismissed, as in case of nonsuit.

A reservation will be made to the Pontchartrain Railroad Company to proceed against the plaintiff by action for damages, or otherwise, for the invasion by plaintiff of the private property of the said defendant, at the junction of the levee and Elysian Fields street.

The reconventional demand contained in the answer of the City of New Orleans will be dismissed.

The decree will be drawn by the counsel for the plaintiff. If not agreed to by the counsel for the defendants, it will be settled by rule within five days from the filing of this opinion.

Judgment.

Eighth district court, Tuesday, December 5, 1871.

N. O., M. AND CHAT. R. R. CO.
vs.
THE CITY OF NEW ORLEANS, CHARLES MORGAN, intervenor. } No. 4.

In this case submitted to the court for adjudication, after deliberation and for the reasons assigned in the written opinion this day delivered and filed, the court considering the law and the evidence to be in favor of the plaintiff—

It is ordered, adjudged and decreed that there be judgment in favor of the plaintiff, the New Orleans, Mobile and Chattanooga Railroad Company, and against the defendant, the City of New Orleans, as prayed for, and that the injunction herein issued be made perpetual that the said City of New Orleans, its officers and agents, and all per-

sons claiming or to claim under them, be commanded, enjoined and restrained from hindering or obstructing or in any manner interfering with the said New Orleans, Mobile and Chattanooga Railroad Company in the occupation, enclosure or enjoyment of the land described in the fifteenth section of the act of the seventeenth of February, 1869, bounded by Girod, Water, and Calliope streets and a line parallel and two hundred and ninety feet easterly from Water street, and
658 bounded by Canal, Delta and Poydras streets, and a line parallel to and one hundred fifty feet easterly from Delta street.

It is further ordered, adjudged, and decreed that the intervention of Charles Morgan be dismissed, and that the defendant, The City of New Orleans pay costs of suit.

Judgment rendered December 5, 1871.

Judgment signed December 15, 1871.

(Signed) HENRY C. DIBBLE,
Judge.

Rule for new trial.—Extract from the minutes, December 14, 1871.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS ET ALS. } No. 4.

On motion of H. H. Walsh, assistant city attorney—

It is ordered that the plaintiff show cause why a new trial should not be granted herein.

It is further ordered by the court that the above rule be set aside and a new trial refused.

Petition and order for suspensive appeal.

Filed December 27, 1871.

Eighth district court for the parish of Orleans.

N. O., M. AND CHAT. R. R. Co.
vs.
THE CITY OF NEW ORLEANS, CHARLES MORGAN, intervenor. } No. 4.

To the honorable the judge of the eighth district court for the parish of Orleans:

The petition of the City of New Orleans respectfully represents:

That there is error to her prejudice in the final judgment rendered herein; and that she feels aggrieved by such judgment, and is desirous of taking a suspensive appeal therefrom.

That by law the City of New Orleans is dispensed from giving bond and security.

The premises considered petitioner prays that she be allowed a suspensive appeal, returnable to the supreme court of the State of Louisiana, on the 3d Monday in January, 1872, without bond and security; and that the New Orleans, Mobile and Chattanooga Railroad Company, Charles Morgan, The State of Louisiana, Simeon Belden, attorney-general of said State, and all other parties interested in the judgment herein rendered, be cited to appear and answer this appeal.

And as in duty bound petitioner will ever pray.

(Signed) GEO. S. LACEY,
City Attorney.

659 *Order.*

Let a suspensive appeal be allowed the City of New Orleans, returnable before the honorable the supreme court of the State of Louisiana on the third Monday of January, 1872, without bond and security; and let all parties be cited to appear and answer said appeal as prayed for, and in accordance with law.

New Orleans, December 27, 1872.

(Signed) HENRY C. DIBBLE,
Judge.

Agreement.—Filed January 25, 1872.

Eighth district court for the parish of Orleans.

N. O., M. AND CHAT. R. R. CO. *vs.* CITY OF NEW ORLEANS ET ALS. } No. 19.

It is agreed that the plans and maps offered in evidence in the district court by any of the parties shall be carried up to the supreme court with the transcript of appeal, and be deemed a part of the transcript of appeal.

January 23, 1872.

(Signed) J. A. CAMPBELL,
Attorney for Plaintiff,
GEO. S. LACEY,
City Attorney.

Clerk's certificate.

I, Thomas Lynne, clerk of the eighth district court for the parish of Orleans, do hereby certify that the foregoing one hundred and forty-six pages do contain a true and correct transcript of all the proceedings had, as well as all the documents filed, testimony and evidence adduced (except the maps and plans as per agreement of counsel filed January 25th, 1872), in the cause wherein the New Orleans, Mobile and Chattanooga Railroad Company is the plaintiff, and the City of New Orleans is defendant, instituted in the fifth district court for the parish of Orleans, and transferred to the said eighth district court, and now on the records thereof under the No. 4.

In testimony whereof, I hereunto set my hand and affix the impress of the seal of said court, at the city of New Orleans, this 5th day of February, A. D. 1872, and of the Independence of the United States the ninety-sixth.

[SEAL.] THOMAS LYNNE, *Clerk.*

(Indorsement on cover:) No. 144. The City of New Orleans, appellant, vs. The New Orleans, Mobile and Texas Railroad Company. Louisiana C. C. U. S. Filed 16th December, 1878.

108-15

Sub. on Mo. to Dismiss

OFFICE SUPREME COURT U.S.
FILED
SEP 8 1882
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States.

No. ~~14~~ 7

THE CITY OF NEW ORLEANS, APPELLANT,

VS.

THE NEW ORLEANS, MOBILE AND TEXAS RAILROAD COMPANY, APPELLEE.

THOS. L. BAYNE,
for Plaintiff and Appellee.

Clark & Hofeline, Brief Printers, 112 Gravier Street.

Supreme Court of the United States.

No. 144.

THE CITY OF NEW ORLEANS, APPELLANT,

VS.

THE NEW OOLEANS, MOBILE AND TEXAS RAILROAD COMPANY, APPELLEE.

STATEMENT.

This suit was instituted by the New Orleans, Mobile and Texas Railroad Company to restrain the city of New Orleans from acts of violence by its officers and agents in demolishing fences, buildings, etc., upon property of complainant in the neighborhood of St. Joseph street, in New Orleans or other property within the limits of the city.

An injunction was granted by the Superior District Court for the parish of Orleans. The city of New Orleans applied to have the injunction dissolved on the ground that its effect was to obstruct and close from public use certain streets or thoroughfares, viz: Notre Dame and St. Joseph streets, between Water and Pilie streets, which it was the duty of the city to keep open for the convenience of the public.

The rule to dissolve the injunction was refused and dismissed. (p. 18.) The City then answered, denying that

the judgment of the Supreme Court No. 3992, which had been set out in complainants' petition, recognized the rights of way or other privileges granted to complainants by the State of Louisiana, and constituted *res adjudicata* of the matters presented in this suit; and averred that another judgment had been rendered by said Court favorable to defendant. And further averred that if any of the real estate referred to in the decision of the Supreme Court of Louisiana or in complainants' petition had been dedicated to public use, it was the right and duty of the city to remove all impediments and obstacles found in said streets, so as to render the same open and free for use on the part of the public, therefore asks for dissolution of injunction and damages.

Then reconvening asks that the rights and claims of the city, as fixed and decreed by the Supreme Court of Louisiana, in suit No. 3701, may be recognized and proper order and process may issue to put defendant in possession of property referred to in said suit, and if this property has been lawfully dedicated to public use the city may have the right to remove obstructions in the above described streets. (p. 19.)

The case was then transferred to the Circuit Court of the United States, District of Louisiana, and the parties agreed "that this suit shall be heard as a chancery suit: that the city corporation at the date of the injunction were in the act of prostrating walls and tanks within the streets as stated in the petition and affidavits filed." (p. 27.)

The case was heard in the Circuit Court of the United

States, and a decree was entered in favor of complainant, recognizing that the judgment rendered by the Eighth District Court for the parish of Orleans, No. 49, Dec. 19, 1871, affirmed by the Supreme Court of the State of Louisiana, No. 3962, May 4, 1874, has the authority of *res adjudicata ;* the subject matter of the two suits being the same and the objects identical ; that the wrongs committed by defendant affected the property embraced by said judgment."

Other parties and other proceedings are introduced into the record, but they refer to controversies which are now ended or the parties have acquiesced in the judgments maintaining complainant's rights as established by the decrees of court.

The city of New Orleans is the only appellant and the attention of the Court will be called only to the matters in controversy between the Rail Road Company and the City. The State has granted to the plaintiff certain rights and privileges which the City disputes the power of its creator (the State) to grant, and the discussion of this power brings us to the argument of the case.

ARGUMENT.

The rights of the complainant cannot be better stated than they are in the judgment of the Eighth District Court, which was subsequently affirmed by the Supreme Court of the State, in the case of The New Orleans, Mobile and Chattanooga Rail Road Company, which was affirmed by the Supreme Court of the State, page 322,

also 468 et seq. of record. 26 Louisiana Annual Rep., p. 517.

"By an act of the General Assembly of Louisiana, approved by the Governor, August 19, 1868, (Acts 1868, p. 28), the New Orleans, Mobile and Chattanooga Railroad Company, a corporation in the State of Alabama, was recognized and authorized to exercise and enjoy the corporate powers and franchises within this State.

Under the provisions of this Statute, and of several subsequent acts, the company was empowered to build and maintain a railroad from a point on the borders of Alabama and Louisiana upon a line from Mobile to New Orleans, through the latter city, crossing the Mississippi by ferry, and westward to the State of Texas. The name of the corporation was subsequently changed, and it is now known as the New Orleans, Mobile and Texas Railroad Company. (Acts 1871, p. 211).

The first act cited authorized the company to run the road along and upon the levee in front of the city of New Orleans. Another act (No. 67 of 1869) empowered the company to enclose and use a portion of the batture, extending about three hundred and fifty-five feet from Calliope street down the river. By another Act (No. 26 of 1869) the company was granted the right to build a passenger depot on the levee, in that portion bounded by Canal, Delta and Poydras streets, and a line parallel to and one hundred and fifty feet easterly from Delta street; " and for the construction of a freight depot and for other purposes of its legitimate business, to inclose and occupy the blocks of ground, parts of streets, and portions of

levee in said city, bounded by Girod, Water and Calliope streets, and a line parallel to and two hundred and ninety feet easterly from Water street." This grant was made with the proviso that the company shall first acquire any private property within the boundary discribed. Still another Statute (No. 31 of 1870) confirmed all grants before made, but changed the line of the railroad leading out of the city toward Mobile. The line first designated was down the levee to the junction of Spain street; thence by a curved line to Enghein street; thence along and upon Enghein street and Lafayette avenue to Claiborne street. (Section 1, Act No. 28, 1868).

The new course was from the levee by a curved line into Elysian Fields streets, and along two central banquettes or walks in said street, being two strips of ground twelve feet in width, one upon each side of and adjoining the land owned by the Pontchartrain Railroad Company in the central portion of the street. (Section 1, Act No. 31, 1870).

Section six of this Act provides, "that all that portion of the levee or streets and grounds in the city of New Orleans lying within the following named limits, viz: The southerly (or upper) line of Canal street, from the Mississippi river to the easterly line of Water street; the easterly line of Water street, from the southerly line of Canal street to the southerly (or upper) line of Girod street; the southerly line of Girod street, from easterly line of Water street to the easterly line of the lands designated for the location of the freight depot of the company; the easterly line of said depot lands, from the

southerly line of Girod street to the northerly (or lower) line of the batture rights owned by the said company; the northerly (or lower) line of said batture rights from said depot lands to the Mississippi river; and the Mississippi river, from the northerly (or lower) line of said batture rights to the southerly line of Canal street is hereby expressly dedicated to public use, and shall forever remain open for such use, and no part of said lands, or of the accretions and wharf in front of the same, shall ever be inclosed or built upon or granted for ferry landings, or exclusively appropriated or used by any individual or individuals, corporation or corporations, or by the municipal authorities of the city of New Orleans."

This Company, however, was granted the right to construct, maintain, and use across or upon said lands, or any part thereof, such railroad tracks, turnouts and switches, from the main track on Water street, as might be necessary for purposes of egress from or ingress to the depots. Any act of the city authorities calculated to contravene this grant was stricken with nullity.

The several acts above cited contain many other grants of aid, privileges and franchises to the said Company; but the issue in this case, and in several others to be now decided, only involve the validity of the acts in so far as they authorize the occupancy of the streets, levees, and lands hereinbefore detailed, and in the manner set forth."

The Court then discusses the legal questions involved, embracing matters involved in suits with other parties, which, as we have heretofore said, are now withdrawn. The record shows suits in which Morgan and the Pont-

chartrain Railroad Company are involved. The matters involved between them in those cases are no longer contested with plaintiff, and now only serve to encumber the record.

In the opinion of the Court, the history of the batture levee is given with full reference to the decisions of the Supreme Court of Louisiana on the subject. The property is described as "*locus publicis*," coming specifically within the definition of the same in our Civil Code articles, and the Spanish and French law prevailing in Louisiana prior to and at the time of cession to the United States, and maintained subsequently under the laws and codes adopted in that State.

When this case came before the Supreme Court there was a division of opinion among the Judges; but upon re-hearing the opinion of the Chief Justice seems to have prevailed, and the judgment was affirmed. In that opinion the Chief Justice said: (26 An. Rep. 324, Record, p. 57), "The opinion of my associates in this case is according to my understanding so diametrically opposed to the jurisprudence of this State and most of the other States of the Union, that I am compelled to dissent from it." The jurisprudence of the State is then reviewed, and as will be seen on the judgment was affirmed. (Ib. 529, Record, p. 63.)

In a later case, City of New Orleans v. New Orleans, Mobile and Chattanooga Railroad Company, 27 An. Rep. 414, his views were fully adopted, and these decisions settle the law of the State and the matters involved in this litigation between these parties.

In this latter case the city urged that the joint resolution of the Legislature granting certain privileges to the railroad was unconstitutional; that the Legislature had not the power to control the municipal wharves and levees; that the Legislature transcended its powers, etc.

The constitutionality of the act was maintained and in reference to the power of the State, the Court say: "The public servitude along the banks of rivers in Louisiana is under the control of the General Assembly." C. C. 453, 455, 458.

The right of the General Assembly to grant the right to corporations or individuals to make and maintain wharves has been long settled. 5 An. 661; 15 An. 577; 22 An. 545; 6 N. Y. 523; 26 N. Y. 287.

These decisions of the highest Court of Louisiana upon a subject peculiarly within its final cognizance would seem definitely to determine all the matters in issue here; that the permission granted by the State to pass on the levee or through the streets and to occupy a portion of the levee for the convenience of commerce would be maintained. This was the conclusion of the Circuit Court of the United States, and judgment was rendered declaring that these matters were *res adjudicata*. See decree, p. 85.

The public domain embraces the public highways and streets—the banks and shores of rivers, etc. These and the rights belonging to them cannot be disposed of except with the consent and concurrence of the State. This State has constantly exercised this power in allowing sales of portions of the levee—in granting permission to rail-

road companies to make structures across rivers, to run along the banks of rivers and to occupy a portion of them.

Charter of New Orleans, Sec. 11, Act of Legislature 1870, p. 35.

Act of Legislature relative to Ponchartrain R. R. Co., 1830, p. 6, Sec. 6; 1872, p. 38, Sec. 15.

Bayou Teche, 1857, No. 142; Act No. 108 of 1872.

N. O. J. & G. N. R. R. Co., Act of 1870, p. 191.

Act of Legislature of Alabama, February, 1839, "Grant's Pass."

20 La. An. 329; 13 Louisiana Rep. 126; 8 An. 145; 13 An. 129; 15 An. 577; 22 An. 545.

Gould vs. Hudson River R. R. Co., 6 New York, (Selden 2), 523.; 18 Howard Rep., 71; 7 Allen, 158.

The city government is a political corporation created by the State, derives its authority to deal with public property from the Legislature. By virtue of this authority it opens streets and grants right of way to railroads.

Brown vs. Duplessis, 14 Louisiana An. Rep., 844.

Mayor and Council of Monroe vs. Hoffman, 29 An. Rep., 652.

A municipal corporation has no implied or incidental authority to alien or dispose of for its own benefit property dedicated to or held by it in trust for public use.

The Legislature has the power to authorize its disposition and to regulate its use.

Dillon on Corporations, Secs. 512, 513, 518, 519;

Van Ness vs. Washington, 4 Peters, 232; 45 New York, 234.

The rights and franchises of the corporation are granted for the purposes of government and may be altered or revoked by the State.

1 Louisiana An. Rep. 162; 14 An. Rep. 406; 5 An. 665; 12 An. Rep. 516.

Barnes vs. District of Columbia, 1 Otto Rep., 544.

"A municipal corporation in the exercise of all of its duties including those most strictly local or internal is but a department of the State. The Legislature may give it all the powers such a being is capable of receiving, making it a miniature state within its locality; again, it may strip it of every power leaving it a corporation in name only, and it may create and recreate these changes as often as it chooses, or it may itself exercise directly within the locality any or all the powers usually committed to a municipality.

We do not regard its acts as sometimes those of an agency of the State, and at others those of a municipality, but that its character and nature remaining at all times the same, it is great or small according as the Legislature shall extend or contract the sphere of its action.

In his work on Municipal Corporations (at § 538,) Judge Dillon says: "As the highways of a State, including streets in cities, are under the paramount and primary control of the Legislature, and as all municipal powers are derived from the Legislature, it follows that the authority of municipalities over streets, and the uses to which they may be put, depends entirely upon their charter or legislative enactments applicable to them."

In 31 New York Rep. 193, the Court say: "City corporations are emanations from the supreme law-making power of the State, and they are established for the more convenient government of the people within their limits. In this respect corporations chartered by the crown of England and confirmed by the revolution stand on the same footing with similar corporations created by the Legislature. Their boards of aldermen, councilmen and other officers, are as truly public officers as the board of supervisors or the sheriffs and clerks of counties or courts; and the property entrusted to their care and management is as essentially public property as that confided to the administration of similar official agencies in counties and towns. In cities, for reasons, partly technical and in part for matters of convenience, the title is vested in the corporate body. It is not therefore shielded from the control of the Legislature as the supreme law-making power of the State. Let us suppose the city to be the owner of a parcel of land not adapted to any municipal use, but valuable only for sale to private persons for building purposes or the like.

No one, I think, can doubt, but what it would be competent to the Legislature to direct it to be sold, and the proceeds to be devoted to some municipal or other public purpose within the city, as a courthouse, a hospital or the like; and yet, if the argument on behalf of the defendants is sound, it would be taking private property for public use without compensation, and the act would be void."

Baird vs. Rice, 63 Penn. Rep. 500; People vs. Vanderbilt, 26 New York, 287.

In 8 An. Rep. p. 149, the Court said. "It has been asked what the nature of the right created by compromise was, if it was not the right of servitude? We have already stated that the conditions appended to the nominal gift of the batture amounted to a dedication of it to the public, to be used as an open space and had no other object."

The defendants might, for the purposes of public utility, thus deprive the city of the right of alienating the batture, or erecting buildings upon it. But as we held in the case of the *State of Louisiana vs. The Executors of McDonough et al.*, such a stipulation was at all times under the control of the Legi lature, who could modify the effects of it and change the destination of the property whenever such a change became of public advantage. Its power to change the destination of it, was expressly recognized by us in the case of *Delabigarre vs. The Second Municipality*, 3 An. 230.

The power of the Legislature to change the destination of public places had been previously recognized in the case of *D'Armas vs. The Mayor et als.*, 5 L. R. 174 and 194; *The Mayor et al. vs. Hopkins*, 13 L. 351; *New Orleans vs. The United States*, 16 Peters, 733; *Municipality No. 2 vs. The New Orleans Cotton Press*, 18 L. 122. These cases were all argued by the ablest counsel at the bar, and the opinions of the Court were prepared with uncommon care.

In 26 An. Rep. 527, the Chief Justice, after quoting the above, says: "What is this batture levee or *locus publicus* upon which defendant has built its railroad tracks

and depots under the authorization of the Legislature? It is a public place which combines the public purposes of a landing for steamboats and vessels, a place for the temporary deposit and keeping of goods, a place for the arrival and departure of travelers and their baggage, and a public highway for vehicles employed principally in the transportation of articles of commerce. It is a public thing according to the definition of the Code: 'Common property, to the use of which all the inhabitants of a city or other place, even strangers, are entitled in common, such as streets, the public walks, the quays.' C. C. 458. Wherever the public is concerned, the State is not without an interest, and may consequently legislate upon the subject."

"In this case, however, the Legislature has not changed the destination of the property, and the grants or privileges conferred upon the railroad company are for the convenience and benefit of the public."

This was followed by an affirmance of these views by a final judgment of the Court, and by the judgment rendered in 27 An. Rep. 415, wherein the Court say: "The public servitude along the banks of rivers in Louisiana is under the control of the General Assembly." C. C. 453, 455, 458.

These judgments constitue *res adjudicata*. This was the decision of Circuit Court, from which an appeal in this case is taken, Record, p. 86. "The Court after consideration of the premises declares and decrees that the judgment rendered by the Eighth District Court of the parish of Orleans, in the suit No. 19, in that Court between

these same parties 19th December, 1871, and which judgment was affirmed by the Supreme Court of the State on the 4th day of May, 1874, upon appeal made by defendant in this suit has the authority of *res judicata* between them, the subject matter of the two suits being the same, and the object identical, and the wrongs committed by the defendant as shown by the testimony, affects the property mentioned in the judgment so rendered by the State tribunals." Judgment of Eighth District Court, Record, pp. 322 and 468 of Supreme Court. Record p. 63.

By the decree the injunction is maintained, judgment is rendered for the plaintiff. "And it still further ordered, adjudged and decreed, that upon the answer and demand in reconvention, filed by the city of New Orleans and upon the issue made thereon, there be judgment against the plaintiff in reconvention, the city of New Orleans, and in favor of defendants to said plea and demand; the New Orleans, Mobile and Chattanooga Railroad Company; that the several acts of the General Assembly granting the New Orleans, Mobile and Chattanooga Railroad Company the right to construct, maintain, and use its track, turnouts, switches, depots, etc., etc., along and upon the levee, streets, or batture in front of the city of New Orleans be maintained as constitutional and valid, and that the city of New Orleans be adjudged to have no right or title of private property in and to the batture property lying in front of the faubourg St. Mary, and that the said property, and especially those spaces of ground described in the grant to the plaintiff, be decreed to be the property of the public, whose destination can only be changed by

legislative authority, and which the city of New Orleans cannot alienate or encumber."

As was said by the Supreme Court of Lonisiana in Trescoll vs. Lewis, 12 Aun. Rep. 198: "Here are all the elements of a suit at law. *Actor, reus, et judex.* The form of procedure is immaterial; if proper parties form issue upon questions either of law or fact before a competent Court, they must abide the decision. *Exceptio rei judicatæ obstat quoties eadem personas, eadem questio revocatur vel alio generere judicii. See Plique & Lebeau vs. Perret, 19 L. 323.*"

In this case cited the Court say, p. 325: "The reasoning of the Court is less to be regarded than the final conclusion announced. We are to enquire rather what was done than what was said." * * "The Court proceeded to affirm the judgment of the District Court in all its parts. If it had been the intention of this Court to reserve the question now presented, the judgment below would have been modified, as is our uniform practice. But such was not the case, and we are bound to consider the judgment of the District Court as forming that of this tribunal, just as much as if it had been copied into our formal decree affirming that of the Court below."

14 An. Rep. 798; 3 An. Rep. 313.

In 12 Ann. 737, the Court said: "The decree of the High Court of Errors and Appeals in this case, is perfectly free from ambiguity; the reason which that court may ha e given for rendering it, are of no consequence to us, and can in no degree affect a judgment which upon its face is complete, lucid and conclusive of the matters at issue between the parties."

What constitutes res judicata is defined in 3 An. Rep. 313; 14 An. Rep. 798; 12 An. Rep. 198; 24 An. Rep. 34; 22 An. Rep. 162; 28 An. Rep. 625; 30 An. Rep. 579; Civil Civil 2286; 6 Wheaton Rep. 113; 18 How. Rep. 420.

In the case of Jeter vs. Hewitt, 22 Howard Rep. 363, the Supreme Court say:

"The authority of *res judicata* as a medium of proof, is acknowledged in the Civil Code of Louisiana, and its precise effect in the particular case under consideration, is ascertained in the statute that allows the proceeding by monition. Under the system of that State, the maintenance of public order, the repose of society, and the quiet of families, require that what has been definitely determined by competent tribunals shall be accepted as irrefragable legal truth. So deeply is this principle implanted in her jurisprudence, that commentators upon it have said, the *res judicata* renders white that which is black, and straight that which is crooked. *Facit excurvo rectum, exalbo nigrum.* No other evidence can afford strength to the presumption of truth it creates and no argument can detract from its legal efficacy.

The jurisdiction of the courts of the United States, in cases like the present, is derived exclusively from the fact that the parties are citizens of different States. The rights of these parties originate in the law of Louisiana, and must be ascertained by a reference to the principles adopted and administered by her constituted authorities. We are not vested with power to review the sentence of her Courts, except in a few cases arising under the Con-

stitution and Laws of the United States; nor is it our province to augment or diminish their value, or to place any different estimate upon them than they have in the municipal Code of the State. They are entitled to the same force and effect here as they have in Louisiana.

In the case referred to by the city of New Orleans, No. 3701, the Court merely dismissed an injunction and said:

"In our opinion the injunction improperly issued in this case. But, as the city has made no claim against the plaintiffs, our former decree was erroneous in granting a demand in reconvention on inhibiting the plaintiffs from occupying the property in controversy. The injunction was, therefore, merely dissolved and dismissed." 26 An. Rep. 485. In the case reported in same volume, p. 514, the city made claim by reconvention, and presented the issues which were wanting in the other case, and upon which the judgment found at page 334 of the record, was rendered by the Eighth District Court which is conclusive upon these issues. This was affirmed by the Supreme Court of the State and the United States Circuit Court decided this to be *res judicata*. (See decree, p. 85).

We respectfully ask that this decree and judgment of the Circuit Court may be affirmed.

THOS. L. BAYNE,
for Plaintiff and Appellee.

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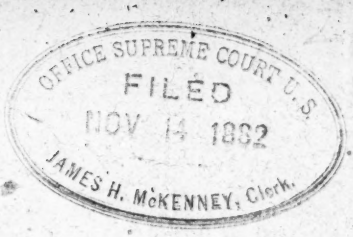

UNITED STATES SUPREME COURT.

No. 7

CITY OF NEW ORLEANS.

versus

THE NEW ORLEANS, MOBILE AND TEXAS RAILROAD COMPANY.

ON MOTION TO DISMISS APPEAL.

THOS. L. BAYNE, AND
JOHN L. CADWALADER,
for Appellees.

L. Graham & Son, Print, 127 Gravier Street.

UNITED STATES SUPREME COURT.

No. 17.

CITY OF NEW ORLEANS.

versus

THE NEW ORLEANS, MOBILE AND TEXAS RAILROAD COMPANY.

ON MOTION TO DISMISS APPEAL.

In this case we have filed a motion to dismiss the appeal upon a stipulation signed by the appellant and the appellee. All of the parties to the record have consented, and all unite in asking for the dismissal of appeal. (See stipulation filed, appendix p.).

The case has been pending in this Court since October, 1878. It has been twice continued upon application of the city and stipulation signed by the counsel for the City of New Orleans, as appellant, and consented to by appellee, viz: in 1881 and in October, 1882. These parties have always been recognized as having sole control of the case. It did not seem to occur to the "Committee appointed by the Premium Bond Act of 1876, to exercise control and supervision over the allotments and premiums," (Section 4.) that they had any right or claim to intervene in this suit, then pending in the United States Circuit Court—either before or after the judgment of the Court was rendered, in June, 1878. Nor has there heretofore

been any assertion of any right by what is termed the "Board of Liquidation," claiming to have been created by Act of the Legislature, in 1880, (Act No. 133.) This board now claims that it has a right to be heard to urge that the Legislature in 1868, 1869 and in 1870, could not change the destination or use of public property, and therefore could not grant to the railroad company the privilege to run through the streets or use such property for railroad tracks, depots, etc., but that the Legislature of 1880, had full power to divest the City of New Orleans of property and vest it (without its consent) in this Board.

In the meantime nothing has transpired to increase or diminish the power of the Legislature.

In order that the Court may understand the issue in this case, as between appellants and appellee, we respectfully refer to the brief filed by appellee, when the case was on the docket for trial, and when we were already fully prepared to submit the case to the Court upon its merits.

STATEMENT.

Briefly—the case is this. The Legislature of Louisiana in 1868, 1869 and 1870, granted a charter to the New Orleans, Mobile and Chattanooga Railroad Company, and passed acts amendatory thereto, whereby it granted to the Railroad Company the right to locate and construct a railroad through the State and along and through certain streets in New Orleans, with the privilege of using certain public property within certain defined limits for switches turnouts and depots.

The name of the company was changed to the New Orleans, Mobile and Texas Railroad Company, by Act of the Legislature, No. 94 of 1871, p. 211.

See extracts from these acts in appendix.

Under Section 1, of the Act of 1870, certain privileges and rights of passage through certain streets, granted by Ordinance of the City of New Orleans, are confirmed, and under Sections 5 and 6, the privileges granted by Act No. 28, of 1869, are also confirmed.

The issue made by the City of New Orleans was that the Legislature did not have the power to make these grants, and that the property or a portion of it, affected by them, was held by the city in some sort of private ownership, distinct from the public property, which it held as a municipal corporation, created by the State and subject to its control.

The contest between the City aud the Railroad Company was in the Eighth District Court of New Orleans, and the judgment of that Court is found at pp. 322 and 468 of record, and the decree of the Supreme Court, affirming that judgment, is at p. 63 of record. Judgment was rendered for the Railroad Company, plaintiff. "And it still further ordered, adjudged and decreed, that upon the answer and demand in reconvention, filed by the City of New Orleans, and upon the issue made thereon, there be judgment against the plaintiff in reconvention, the City of New Orleans, and in favor of defendants to said plea and demand, the New Orleans, Mobile and Chattanooga Railroad Company; that the several Acts of the General Assembly granting the New Orleans, Mobile and Chattanooga Railroad Company, the right to construct, maintain, and use its

track, turnouts, switches, depots, etc., etc., along and upon the levee, streets, or batture in front of the City of New Orleons, be maintained as constitutional and valid, and that the City of New Orleans be adjudged to have no right or title of private property in and to the batture property lying in front of the faubourg St. Mary, and that the said property, and especially those spaces of ground described in the grant to the plaintiff, be decreed to be the property of the public, whose destination can only be exchanged by legislative authority, and which the City of New Orleans cannot alienate or encumber."

This judgment was affirmed by the Supreme Court of the State of Louisiana. Record, p. 63.

In the Circuit Court of the United States the judgment of the Court was that this judgment of the Eighth District Court and of the Supreme Court of Louisiana was final and constituted *res adjudicata.* From this decree, which was rendered on the 11th day of June, 1878, the case has been continued twice upon application by the city. The appeal is to be dismissed by an agreement signed by the city attorney and by the Mayor of the city of New Orleans under an ordinance unanimously adopted by the City Council.

Argument.

Now, we respectfully ask by what right the Board of Liquidation can oppose the dismissal of this appeal. The autonomy of the city, its power to stand in judgment, has been recognized since its incorporation in 1805.

It has exercised all the usual powers of a muni-

cipal city government, and the records of this court show many cases in which it has appeared as appellant or appellee. It is not pretended that it has made any contract or grant or in any manner devised any property or any rights to the "Board of Liquidation." If that Board has any claim to any property or any privileges these came from the Legislature, and if it is admitted that the Legislature has power to convey this property or these privileges, then the controversy is ended and the grant made by the Legislature to the Railroad Company was conclusive and complete ten years before the creation of the Board.

The sole controversy presented in this case by appellant is, that the legislature in making the grants to the Railroad Company of the right of passage through certain streets and the right to use certain property exceeded its power; that the city's right of property, was such that it could only be conveyed by its own voluntary contract or by expropriation, and yet the sole claim presented by the Board of Liquidation is that the Legislature has conveyed the same property to it. If the power existed it has been exercised in favor of the Railroad Company. If it does not exist the Board of Liquidation can have no right over it and cannot oppose the motion to dismiss the appeal.

The appellees have all that the State can give and all that the city can give. If the Legislature had power over the rights and property described, or if the city had power over it, then the Railroad Company has what has been granted by both and there is nothing left for the Board of Liquidation, except that it may take the money paid by the company, and to

that I presume there is no objection, unless the city applies it as directed by Act No. 81 of 1882.

This seems to me to be a complete answer without going further into the subject.

There is another view of this case. If the Board of Liquidation has any vested right in the privileges or property involved in this suit, then the action of the City of New Orleans would not affect those rights, and what those rights may be, are only determinable in a court of original jurisdiction. 17 Howard Rep. 47.

If the argument made by the counsel for the Board of Liquidation is correct, it establishes beyond controversy that it has no right to be heard here to oppose the dismissal of this appeal. If the city has rights over the subject matter, it has exercised them fully and fairly, and if it has none there is no ground for complaint by the Board of Liquidation. There is no ground for complaint in any phase of the case.

It cannot deny the power of the Legislature and then claim under it. If it could claim successfully that the Legislature had no power in 1868 and 1869 and 1870, but had power in 1880 to divest the city of the exercise of its usual legislative authority, and its control over its property, and to vest it in the Board of Liquidation, then its rights are not affected by the action of the city, and it cannot be heard here to oppose the dismissal of the appeal. But we respectfully submit, that the Legislature has not, in the acts of 1876 or 1880, divested the City of New Orleans of its usual legislative power over its streets, avenues, levees or property, or such privileges as are involved in this suit. The history of the city and of its legislation since

shows that this has been accepted as true by interested. It has not ~~claimed~~ to exercise power.

The Act of the Legislature of 1876, known as the "Premium Bond Act," has been fully discussed in this forum and by this Court, and after collating the decisions of the Supreme Court of Louisiana, and of this Court, there is not much left of it. The parties claiming the right to oppose the dismissal of appeal had no existence under that act. The act directed the City of New Orleans how the proceeds of sale of property was to be applied, and gave to the City Council discretion to determine whether to make the application to the floating or the bonded debt. The State ex rel. New Orleans Gas Light Company vs. the Mayor and Council of New Orleans, 32 An. Rep., 271: "It is manifest that it is discretionary with the council to apply the proceeds of the sale or conveyance of such property either to the bonded or the floating debt; and, therefore, a mandamus will not lie to compel the application of the funds to one rather than to the other."

And in discussing the Act of 1880, the Court ruled (32 An. Rep. 919), that "the Board of Liquidation cannot claim any control over the propriety of the exercise of a legislative discretion on the part of the City Council to dispose or not of such rights of way, and can exercise none themselves."

The sole interest which the board could have, was that the property or right should be disposed of for cash, in order that it might compel the City of New Orleans to deposit this cash with the Fiscal Agent to the credit of the city debt fund.

But the Legislature of Louisiana has, by a subsequent Act, No 81, of 1882, p. 103, even taken away this right, and directed that the proceeds of sale shall be applied *by the City of New Orleans* "to works of public improvement of a permanent character, such as paving streets, embellishing parks, etc.;" and has formally repealed "all laws, and especially so much of Sec. 10 of Act No. 31, Acts of 1876, known as the Premium Bond Act, and of Sec. 5 of Act. No. 133, Acts 1880, as may be in conflict herewith." See Appendix, p. .

In Act No. 14, of 1882, establishing another city charter, the Legislature has still further vested this power in the City of New Orleans, by providing that the City of New Orleans may "sell inlots or squares so much of the batture as may not be required for public purposes. Referring to the Act. No. 133, of 1880, it will be seen that property dedicated to public use is specially excluded. The Legislature had, in 1868, 1869 and 1870, destined the rights and property involved herein to a public use, in providing for the construction through the streets, and into the city, of a great railroad, which was to be of inestimable value to the whole public of New Orleans, and largely increase its prosperity, and through it the prosperity of the State. This is universally recognized as a public use.

Olcott vs. The Supervisors, 16 Wallace, 678.
19 Wallace 83.
19 Wallace 667.
Perry vs. Keene, 56 New Hampshire Rep. (1 Hall) 514.

Police Jury for the use of the New Orleans and Great Western Railroad Company vs. Succession of McDonogh, 8 La. An. Rep. 341.

Layton vs. New Orleans, 12 La. An. Rep. 515.

The City of New Orleans is now before this Court in the case of the City of New Orleans vs. Judah Hart, No. 942, wherein it claims that property, such as is involved in this suit, is public property, and is not, therefore, subject to seizure by the creditors of the city.

In Klein vs. New Orleans, 99 United States Reports, 150, this Court held that property similar to that involved in this suit was held for public use, and was not subject to seizure.

"The bill of exceptions shows that the lands consisted of "two squares of ground which had formerly constituted the easterly bank of the Mississippi river, but which, by the gradual accretion of said easterly bank, has ceased to constitute the bank of the river, but which were now used by the public for wharf and levee purposes, said squares forming a portion of the land known as the "batture property." "From this it must be inferred that they were for the use of the public."

The case of the New Orleans & Carrollton Railroad Co. vs. Municipality No. One, 7 La. An 148, is referred to approvingly.

The power of the Legislature to make such destination to a public use, is fully recognized by the Supreme Court of Louisiana.

City of New Orleans vs. New Orleans, Mobile and Chattanooga Rail Road Co., 27 La. An Rep., 414.

Commented upon and affirmed by Supreme Court of the United States in Ellerman vs. N. O. & T. R. R. Co., not yet reported.

Police Jury of the Parish of Jefferson, 32 La. An. Rep. 628.

Kline vs. The Parish of Ascension, 32 La. An. Rep. 565.

In these cases, recently decided by our Supreme Court, there is a full review of the subject.

Parish vs. Municipality, etc., 8 An. Rep., 149,

Police Jury of Bossier vs. Corporation of Shreveport, 5 An. Rep., 661.

State ex rel., Hernandez vs. Flanders, Mayor, 24 An. Rep., 57.

Layton vs City of New Orleans, 12 An. Rep.. 515.

Darlington vs. Mayor & Co., 31 N. Y. Rep., 164.

Dillon, Municipal Corporations, Sec. 66, 67, et seq. (Third Edition, 1881.)

New Orleans vs. Clark, 95 U. S., 654; 92 U. S., 312.

I trust that I have demonstrated that the opponents to the motion to dismiss the appeal are without interest, and that the parties to the record—the appellant and the appellee—have a right to dismiss the appeal and terminate the litigation which has been pending between them for ten years or more.

It will be seen by the record that many of the controversies in which other parties had been involved

have all terminated many years since; and pending this litigation many new rights and privileges have been acquired under ordinances of the city adopted since that time. The decision of this Court in the case of Ellerman vs. The N. O., M. and T. R. R. Co. which involved one of the grants to the R. R. Co. now opposed, has removed one o the leading subjects of the controversy, and like combatants who had worn themselves out in long and tedious warfare, the parties came together and agreed to cease litigation—to dismiss their suits—made a final and we trust lasting peace which no outside party should be permitted to disturb.

The general rule is that a person cannot appeal in a suit wherein he is not a party. Ex parte Cockcroft, 104 U. S. 578; 94 U. S. 14; Barribean vs. Brant, 17 Howard 43; Bronson vs. Railroad Company, 2 Black Rep 527; McGavock vs. Woodlief, 20 Howard Rep. 221.

We think we have shown that the present opponents have no interest in this litigation. We do not understand that they pretend to claim that the Legislature did not have the power to authorize the passage of the railroad through the streets designated, nor of the power of the City Council to pass ordinances on this subject in 1867, which were confirmed by the Legislature in 1870, when all parties were anxious to induce the construction of the road and thus advance the prosperity of the city and State. The Railroad Company have discharged their duty and made the road part of one of the great trunk lines between the North and South.

The opposition is directed against the license granted by the Legislature to use certain batture lots for depots, switches, etc. The city had made opposition and withdraws it. There is no question of title or sale involved, and if there was, it is apparent that the Railroad Company has the prior title, derived from the very source from which the opponents now claim. Can this new litigant now come in and deny the power of the Legislature in one case and affirm it in the other.

We respectfully ask that the motion to dismiss the appeal may be granted.

THOS. L. BAYNE, AND
JOHN L. CADWALADER,
for Appellees.

APPENDIX.

No. 28.] AN ACT

Relative to the New Orleans, Mobile and Chattanooga Railroad Company, a corporation of the State of Alabama, and authorizing and empowering said Company to exercise and enjoy its corporate powers and franchises in the State of Louisiana.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That the New Orleans, Mobile and Chattanooga Railroad Company, a corporation incorporated, organized and existing under and by virtue of its act of incorporation duly enacted by the Legislature of the State of Alabama, entitled an act to incorporate the New Orleans, Mobile and Chattanooga Railroad Company, approved November 24, 1866, and amended by an act approved February 12, 1867, is hereby recognized and approved as a body politic and corporate, with all the powers, privileges, rights and franchises granted to it by the said State of Alabama, in and by said act of incorporation, hereby adopting, confirming and approving all the provisions of said act of incorporation granted to said company, so far as the same may be applicable to this State, and may be adopted, approved and confirmed thereby. The said company is hereby invested with the powers, privileges and franchises granted to it in its said act of incorporation, and is empowered and authorized to exercise and enjoy the same in the State of Louisiana, and to have, exercise, and enjoy all the rights, powers, privileges and franchises pertaining to corporate bodies within the

said State of Louisiana necessary for the full enjoyment and exercise of said rights, powers, privileges and franchises granted and secured to it by its said act of incorporation, and necessary to secure, attain and accomplish the objects and purposes of its incorporation, in the same manner and with the like power and effect as if said company had been incorporated by virtue of any grant or law of this State, subject only to the conditions, provisions and restrictions of this act as hereinafter set forth.

SEC. 2. *Be it further enacted, etc.*, That to enable said company to accomplish the purposes and objects of its incorporation, the furtherance and pursuit of which in the State of Louisiana is hereby granted, the said company is hereby empowered and authorized:

First—To locate, construct and build, and thereafter to own, maintain and use, by running thereon its engines, cars, and trains of cars, a railroad, with one or more tracks and suitable turnouts from any point between Calliope and Girod streets, and between Delta street and the Levee, in the City of New Orleans, along and upon the Levee in said city, or along and upon a street or streets near the Levee, as may be deemed most proper and expedient (provided, that the grounds and buildings now owned by the Pontchartrain Railroad Company, or any other railroad company between Girod, Poydras, Delta and Water streets, shall not in any manner be interfered with), to a point at or near the junction of the Levee and Spain street, thence by a curved line to Enghein street; thence along and upon Enghein street and Lafayette Avenue to Claiborne street, and thence upon such a course or route

as may be deemed by a majortity of the directors of said company most proper, expedient, or necessary, and best adapted for the public accommodation, to any point on the line between the State of Louisiana and the State of Mississippi, and thence extending the same through the States of Mississippi and Alabama to the City of Mobile, in the State of Alabama, and thence to other places, as provided in said act of incorporation.

* * * * *

Second—To locate, construct and build, and thereafter to own, maintain, manage, and use, by running thereon its engines, cars, and trains of cars, and railroads, with one or more tracks and suitable turnouts, from a point on Rampart street between Lafayette street and Girod street, in the City of New Orleans, across, along, and upon intervening streets and grounds to Locust street; thence, across, along, and upon intervening streets and grounds, in such a course as may be deemed necessary by a majority of the directors of said company, to the said neutral ground in the centre of Claiborne street; thence along and upon the central portion of said neutral ground in the centre of Claiborne street to St. Bernard avenue, and thence upon such a course or route as may be deemed by a majority of the directors of said company most proper, expedient or necessary, and best adapted for the public accommodation (to any point on the line of railroad hereinbefore authorized, between the junction of Lafayette avenue with Claiborne street and the said line and the State line; and thence along said line of railroad) to any point on the line between the State of Louisiana and

ditions of the same; and in case of any neglect or refusal by the said city, the said company may apply to, and it shall be the duty of any court of competent jurisdiction to compel and enforce the completion of said work without delay; and the said company may proceed, if it prefers, to open, grade and prepare the streets mentioned in said ordinances, for the uses aforesaid; and whatever charges, cost or expenditures, that have been heretofore required or occasioned by the neglect or refusal of the said city to fulfill their obligations, assumptions or duties under the ordinances aforesaid relative to said streets, or that may be hereafter required or occasioned by the refusal or neglect after the notice aforesaid [required] by this act, may be recovered by said company from the said city.

And be it further enacted, etc., That the said company be and is hereby authorized and empowered to locate, construct, maintain and use for the passage of its engines and cars, the tracks of its railroads (with the requisite curves to and from the same) from the levee to the line designated in the said ordinances of the City of New Orleans, for the extension of Claiborne street, along and upon the portions of Elysian Fields street, and intervening streets, originally designated for the two central banquettes or walks in Elysian Fields street, the said banquettes being two strips of ground twelve feet in width, one upon each side of and adjoining the land said to be owned by the Pontchartrain Railroad Company, in the central portion of said street; and no ordinance heretofore passed, or which may hereafter be passed by the City of New Orleans.

No. 81.] AN ACT

Entitled an act to authorize the city of New Orleans, in the sale or lease of franchise or right of way for street railroads, or other privileges, to apply the price paid for the same in the performance of works of public improvements, of a permanent character, such as paving streets, embellishing parks, etc.

Whereas, Notice, as required by Article 48 of the Constitution, has been given of the intention to apply for the passage of this act; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That hereafter, whenever the city of New Orleans, through her proper authorities, shall contract with private corporations, or individuals, for the sale or lease of public privileges or franchises, such as the right of way for street railroads, or for other public undertakings, within her legal power and control, the price paid for the sale or lease of public privileges or franchises, shall be applied by said city in the performance of works of public improvement of a permanent character, such as paving streets, embellishing parks, etc.

SEC. 2. *Be it further enacted, etc.*, That all laws or parts of laws, and especially so much of Section 10 of Act No. 31, Acts of 1876, known as the Premium Bond Act, and of Section 5 of Act No. 133, Acts of

1880, as may be in conflict herewith, be and the same are hereby repealed.

R. N. OGDEN,
Speaker of the House of Representatives.
GEO. L. WALTON,
President pro tem. of the Senate.

Approved July 5, 1882.

S. D. McENERY,
Governor of the State of Louisiana.

A true copy:

WILL. A. STRONG,
Secretary of State.

AN ORDINANCE.

In relation to "The New Orleans, Mobile and Chattanooga Railroad Company," a Corporation of the State of Alabama.

Whereas, By the terms and provisions of the ordinances which have been heretofore adopted by the city of New Orleans, in relation to the New Orleans, Mobile and Chattanooga Railroad Company, certain rights and privileges were granted to, and certain agreements made with the said Company, conditioned that its line of railroad, between the cities of New Orleans and Mobile, should be completed prior to the 24th day of November, 1869.

And whereas, That one of the said agreements on the part of the city of New Orleans is, that the city will cause to be opened for public use an extension of Claiborne street, from St. Bernard Avenue to Lafayette Avenue, in the line of, and in the same manner as that part of Claiborne street, between St. Bernard Avenue and Canal st,. and that the said Company may occupy the central portion of the neutral ground in such extension for the tracks of their railroad.

And whereas, That although one of the ordinances relating to said Company was adopted February 16th, 1867, and the other, in which the agreement relating to the extension of Claiborne street was made, was adopted November 14th 1867, it was impossible for the said Company to obtain from the State of Louisiana any charter or grant whatever, for the construction of its railroad within the limits of the State of Louisiana, until the nineteenth day ef August, 1868, when the necessary grant and privilege was given to it by an Act of the General Assembly.

And whereas, The said Company have already made all requisite preparation and provision for the immediate construction of its railroad between the cities of New Orleans and Mobile, and have already placed under contract the construction of all the bridges and all of the grading therefor (except the grading to be done by dredges near the Rigolets), all of which work is, by the terms of the contracts, to be completed, ready for the track to be laid, prior to the dates varying from June 1st to November 1st. 1869.

And whereas, The said Company will consent to require that the city shall at present open and grade for their immediate use only so much of the neutral ground of said extension of Claiborne street as will be sufficient for the laying of the tracks of its railroad from Elysian Fields street to Lafayette Avenue, and will further consent that it will not require the city to open and grade the remainder of said extension of Claiborne street, in accordance with the agreement contained in the ordinance above referred to, until after the line of its railroad shall have been built between the cities of New Orleans and Mobile.

And whereas, The cost to the city for the purchase of all the property required for the opening of that part of the said extension of Claiborne street, from Elysian Fields street to Lafayette Avenue, is estimated to be only about nine or ten thousand dollars; *and whereas*, the grading of so much of the neutral ground in that part of said extension, as is required for the immediate use of the said Company, is estimated to cost only about twenty-five thousand dollars; *and whereas*, the said portion of the neutral ground in said exten-

sion of Claiborne street, from Elysian Fields street to Lafayette Avenue, will be required by said Company for the laying of the tracks of its railroad in July or August of the present year; *and whereas*, the great delay in the commencement of the road, occasioned by the impossibility of obtaining the requisite franchise therefor from the State of Louisiana, prior to August 19th, 1868, renders it impracticable for the Company to complete its line of railroad to Mobile prior to November 24th, 1869, without unnecessarily increasing the cost of the work; therefore,

Be it ordained, That the time limited (*id est*, November 24th, 1869) for the completion of the railroad of the said The New Orleans, Mobile and Chattanooga Railroad Company, between the city of New Orleans and the city of Mobile, in the ordinances which have been heretofore adopted by the city of New Orleans in relation to the said Company, be and the same is hereby extended for the term of one year (*id est*, until November 24th, 1870) from and after the expiration of the time limited in the said ordinances heretofore adopted, *Provided*, That the said Company shall only require the city of New Orleans to open and grade such portion of the extension of Claiborne street, from St. Bernard Avenue to Lafayette Avenue, as is required for the laying of the tracks of its railroad, from Elysian Fields street to Lafayette Avenue, until after the line of its railroad shall have been built between Elysian Fields street, in the city of New Orleans, and Mobile.

Be it further ordained, That immediately after the acceptance of this Ordinance by the said Company,

the city of New Orleans will proceed to open that part of the said extension of Claiborne street, between Elysian Fields street and Lafayette Avenue, and to grade so much of the central portion of the neutral ground thereof as is required by the said Company for the laying of the tracks of its railroad, and will complete the same by August 1st, 1869, and after the said Company shall have built its line of railroad from New Orleans to Mobile, as hereinbefore named, provided it be built within the extension of time by this Ordinance granted, and after the expiration of two years from and after the adoption of this Ordinance, then the city of New Orleans will, at the request of said Company, further open and grade so much of the neutral ground of said extension of Claiborne street, as is required for the laying of the tracks of the railroad of said Company, between Elysian Fields street and St. Bernard Avenue, and after the expiration of five years from and after the adoption of this Ordinance the city will, at the request of said Company, complete the opening and grading of said extension of Claiborne street, from St. Bernard Avenue to Lafayette Avenue, as provided for in the ordinance, approved November 14th, 1867.

ALFRED KEARNEY,
President Board Assistant Aldermen.

THOMAS MARKEY,
President Board Aldermen.

Approved June 17th, 1879.

JOHN R. CONWAY,
Mayor.

NOTE.—This Ordinance of the City of New Orleans was accepted by the Company, June 24th, 1869, by a resolution of its directors, and a copy of such resolution was sent to the Mayor of said city, June 25th, 1869.

Section 28 of Act of the Legislature, No. 20 (p. 14), approved June 23d, 1882:

"To incorporate the city of New Orleans, provide for the government and administration thereof and to repeal all acts inconsistent and in conflict with its provisions," is as follows:

"SEC. 28. That all the rights, titles, and interest of the City of New Orleans, as now existing in and to all lands, tenements, hereditaments, bridges, ferries, streets, roads, wharves, markets, stalls, levees and landing places, buildings and other property of whatever description, and wherever situated, and with all goods, chattles, moneys, effects, debts, dues, demands, bonds obligations, judgments and judgment liens, actions and rights of actions, books, accounts and vouchers, be, and they are hereby vested in the City of New Orleans, as incorporated by this act.

And

SEC. 8. "The council shall also have power to * * * * * lay off and sell in lots and squares so much of the batture from time to time as may not be required for public purposes, but the right of accretion or to future batture shall never be sold."

It may be contended that this law has not gone into effect, but the Constitution, Art. 40, provides that laws take effect after promulgation.

"No law passed by the General Assembly, except the general appropriation act, or act appropriating money for the expenses of the General Assembly, shall take effect until promulgated. A law shall be considered promulgated at the place where the State journal is published the day after the publica-

tion of such law in the State journal, and in all other parts of the State twenty days after such publication."

Under the Act No. 133, of 1880, the Mayor of the City of New Orleans is made a member of the Board of Liquidation; the Administrators, Walsh, of Finance, and Huger, of Accounts, are also members of the board, and all of these concurred n making the compromise for dismissal of the appeal. They did not consider that they were in any manner infringing upon the rights of the Board of Liquidation, of which they were members; nor was there any opposition manifested by the board; nor is there any suggestion that the compromise was not fairly and fully made, and it is perfectly apparent that it relates to rights and privileges granted by the City of New Orleans in 1867 and 1869, confirmed by the legislature, and of rights and privileges granted by the legislature, and that no question of title to property is involved in the grants thus made.

The officers elected under this law have not yet entered upon duty, but does [redacted] this postpone the operation or effectiveness of the law? The last section provides:

SEC. 28. "All laws in conflict, inconsistent or contrary to the provision of this act are repealed."

OFFICE OF

Board of Liquidation, City Debt,

ROOM 3, CITY HALL.

NEW ORLEANS, OCTOBER 12TH, 1882.

DEAR SIR:

You are hereby notified that the Board of Liquidation will assert its right to the fund derived from the compromise with the N. O., Mobile & Chattanooga R. R., and you are notified not to part with such fund. The Board will at once take legal proceedings to secure the fund.

Very truly,

(SIGNED) HENRY C. MILLER,
Attorney for Board of Liquidation.

B. T. WALSHE,
Administrator of Finance.

New Orleans, Nov. 8th, 1882.

A TRUE COPY:
B. T. WALSHE,
Administrator of Finance.

Edmund A. Deslonde, being sworn, says, that he is fifty-four years of age, and has resided in New Orleans some thirty years, more or less, and continuously since the year 1865; is a native of Louisiana, and has been engaged in the real estate business, selling and purchasing property; has often acted as an expert or appraiser of real estate under appointment of Courts.

Furthermore, he states that he is familiar with all the property in New Orleans, known and designated as Batture property and lots: that he has examined the several squares described and marked on the Map No. 144, made part of this record, being squares "A" and "B," situated between Canal and Poydras streets, also square 27, "A" or "C" and fractional square "D," and square "E" with fractional square "F."

Whatever speculative value may be at present attached to squares "A" and "B" by reason of contiguous improvements and the extension of development of rail roads along and over the batture and through the squares, some ten years or so ago they would barely have realized, if then sold, more than eight or ten thousand dollars, as illustrated by the sale of the fractional square, on which the Crescent City Railroad Company have recently erected their Canal street depot, diagonally opposite said squares "A" and "B." The sale referred to, was effected at public auction some ten years ago or thereabout, and the square with tenantable buildings thereon, sold for less than eight thousand dollars.

The other squares on the Map, viz. 27, "A" with portion of square "D," and square "E" with portion of "F," derive their value not from any superior commercial or industrial advantages which they offer, but

simply and merely from the presence of rail road lines and their extension within the past few years, say six or seven years, and from a demand especially within the past two years, resulting from a desire of the several trunk lines to effect close connection in that locality. Apart and aside from this accidental and artificial cause, these squares would have no more value than other property within a radius of two or three squares. If subdivided into 30 feet lots, which is the usual measurement of lots in this city, these four squares would give about 32 lots, whose intrisic value, apart from that imparted by the rail road enterprize, would be one thousand dollars per lot, say $32,000 for the four squares, and without the rail road competition now existing, I do not believe they would sell for a higher price at the present time.

E. A. DESLONDE.

Sworn to before me, on this 9th day of November, 1882.

WILLIAM L. POOLE,
Notary Public.

108-11

IN THE

Supreme Court of the United States.

THE CITY OF NEW ORLEANS, APPELLANT,
vs.
THE NEW ORLEANS, MOBILE & TEXAS RAILROAD COMPANY.
No. ~~8~~ 7

In accordance with the ordinance No. 8,079 adopted by the city council of New Orleans on the 11th day of October, 1882, and the agreement signed by the mayor of the city of New Orleans, acknowledging a compromise and settlement in accordance therewith and an acquiescence in the judgment rendered by the Circuit Court of the United States for the District of Louisiana as final in favor of The New Orleans, Mobile & Texas Railroad Company, appellee, the appeal in this case is dismissed, and I respectfully ask that an order of the Supreme Court of the United States may be made accordingly.

New Orleans, October 11th, 1882.

CHAS. F. BUCK,
City Att'y of the City of New Orleans.

I respectfully concur in the application of the city attorney for the dismissal of the appeal.

THOS. L. BAYNE,
Att'y for N. O., M. & T. R. R. Co., Appellee.

SUPREME COURT OF THE UNITED STATES.

No. 17.—October Term, 1882.

THE CITY OF NEW ORLEANS
vs.
THE NEW ORLEANS, MOBILE & TEXAS RAILROAD COMPANY.

It is admitted that the Board of Liquidation has not issued any bonds under the act of the legislature, No. 133 of 1880, but the Board of Liquidation is issuing bonds under the act of 1882 in pursuance of its functions under that act.

H. C. MILLER.

OFFICE SUPREME COURT U. S.
FILED
NOV 14 1882
JAMES H. McKENNEY, Clerk.

108-15

UNITED STATES SUPREME COURT.

No. 7

THE CITY OF NEW ORLEANS

versus

THE NEW ORLEANS, MOBILE AND TEXAS RAILROAD COMPANY.

Brief on behalf of the Board of Liquidation of the City Debt of New Orleans, on its motion to be admitted as the party appellent herein.

L. Graham & Son Print, 127 Gravier Street.

SUPREME COURT OF THE UNITED STATES.

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108-15

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Brief on behalf of the Board of Liquidation of the City Debt of New Orleans, on its motion to be admitted as the party appellent herein.

STATEMENT.

The judgment from which this appeal is taken, affirms the validity of certain grants of land of the City of New Orleans, made by acts of the Legislature of Louisiana, to the New Orleans, Mobile and Texas Railroad Company, the validity of which acts, the City contested in the lower Court. The lands form part of what is known as the batture above Canal street, i. e., accretion made by the river to the soil fronting upon the river. The character of the title to the batture, has been the subject of frequent contention in Louisiana. By the civil law all such accretions belong to the front proprietor, subject to the right of the public to so much of the space as may be requisite for roads and levees. Civil Code of Louisiana, Article 509. Prior to 1820, there were claims asserted by the riparian proprietor to the alluvion then formed in front of their estates. The claims were resisted by the City, which claimed all the space between the line of the estates, and the edge of the water There was then a compromise, which recognizing the rights of

the riparian proprietors to a certain extent, stipulated that all of the batture outside of a fixed line, should remain inalienable and used for no other than public purposes. Thus matters remained until 1850, when the great increase of the batture, induced renewed assertion of title on the part of the riparian proprietors, and another compromise between the City and the front proprietors. By this compromise, sanctioned by the legislative act of that year, certain squares of the batture were laid out into lots, sold and the proceeds divided in these proportions, one-third to the sinking fund of the City, i. e., applicable to payment of its debts, one-third to Second Municipality, i. e., the municipal government, and one-third to the riparian proprietors.

This legislation and the compromise proceeded upon the theory of proprietary rights to this batture, in the city, as well as in the front proprietors—and on this theory two-thirds of the proceeds of sale were awarded to the city. But with reference to the batture property not then sold, that is the remainder of this batture, there was an abandonment of all claims to it, on the part of riparian proprietors, and their transfer to the city, in perpetuity and in full ownership, all their rights to said batture, as well as all and every enlargement thereof." 26 Ann. p. 479. The batture thus ceded to the city, in perpetuity and full ownership, embraces the land involved in this controversy, and which the Legislature of the State, without and against the consent of the city, undertook to grant to the Railroad Company. All these facts, exhibiting the title of the city to these lands, are grouped in the decision of the Supreme Court of Louisiana, in the litigation between these parties, reported in 26th Louisiana Annual Reports, pp. 479, 480 *et seq.* Of that litigation, as well as of another in the same volume, the report of which begins on page 517 of same volume, the instant case in which this appeal is taken, was the sequel. The Supreme Court of Louisiana, in one of these cases, affirmed the judgment of the lower Court, which maintained the validity of the legislative grants, but evidently the Supreme Court designed to restrict its adjudication to a scant recognition of the right of the legislative department to grant to the Railroad Company the right to lay its tracks along

the streets extending through the batture, the Court preceding its decree of affirmance with this statement.

"The sole question presented in this case, is the power to grant to a railroad company the right of way through a street in this city. A thorough examination of this question has led us to the conclusion that it has."

But in these cases, there is an elaborate examination of the question of the nature of the title of the City to this batture. The Court reached the conclusion that the title of the City under this cession of rights from the riparian proprietors, was higher than a mere title to a locus publicus, and was in the nature of that of a private proprietor, which the Legislature could not divest and confer the land on the Railroad Company, as attempted in the legislative acts under consideration. Thus the Court observes, defining the title derived by the City from the compromise. The title, it would seem, was thereby vested in the city, so far as the original owners, parties to the above act, could confer it, and the property is under the exclusive control of the City, as owner, for the benefit of the inhabitants, and subject to the servitude in favor of commerce, if needed, unless there is in law some such relation between the municipal corporation and the State, as makes all property acquired by the corporation the property of the State and subject to control. Is this so?

This the Court denies, and proceeds to distinguish the title of the City, from that of mere administration of a locus publicus, affirms it to be of the higher character, not to be controlled or taken from the city by the Legislature. The Court observes:

"The theory of argument that the Legislature has absolute ownership and control of all the property and the rights of a municipal corporation, because the corporation is represented in the Legislature, is not conclusive. Such representation is only in matters properly within legislative action, just as the representation of all other portions and inhabitants of the State. The private rights of the corporation are as much protected as those of individuals. And it is a fact manifest to

all, that the incorporation of such a city as New Orleans is a necessity. The multiplying and complicated interests of the compact and increasing community are such, that the Legislature cannot administer them, and some of them are of such a nature as not to be within mere legislative action, but are to be conducted under general rules, thus necessitating the creation of an intellectual body, with something more than governmental functions, but which do not constitute an *imperium in imperio.*"

If, then, a municipal corporation can acquire the fee simple of property, we think the squares, intended for the depots of the plaintiffs, were acquired and they cannot be taken by the Legislature while the city corporation exists. The Legislature expressly recognized and ratified the compromise of September, 1820, in which the parties donating or destinating acted as riparian proprietors, and in the Act 257, of 1850, the section of Act 1836, prohibiting the violation of said compromise, was repealed, and the Municipality No. 2 was authorized to enter into an agreement with the said parties "for the sale of said batture," on certain conditions which are complied with. The Court concludes with a decree dissolving an injunction sued out by the Railroad Company to protect their possession of the land. These two decisions taken together seem to be *res judicata* in favor of the Company as to the right to lay their tracks, and in favor of the City of New Orleans, affirming its title to the land, and denying to the Legislative department the power of taking private property from its owner to give it to a Railroad Company. Sec. 26th Louisiana Annual Reports, pp. 483, 484. There was a dissent from the Chief Justice.

The reference to these decisions is made mainly to show the title of the City to this batture as adjudged by the Supreme Court, for it is upon the character of that title that the Board of Liquidation bases its demand to be admitted to take the place on the record of the appellant, the City of New Orleans.

The litigation thus ended in the State Courts, was renewed by the Railroad Company in the United States Circuit Court, Record, p. 1. It is difficult to resist the conclusion, from the

perusal of the petition of the Railroad Company in the suit thus renewed, now here by this writ of error, that it recognized the effect of the decision of the Supreme Court, to be adverse to it on the question of the grant of the land. The petition alleges that the decisions had recognized the right of the Company, to their tracks below Canal street absolutely; that as to the railway buildings, etc., on the levee between Canal and Calliope streets, the decision had recognized the right to remain in peaceable possession thereof, subject to certain rights of the City to be judicially ascertained. Rec. p. 1. The decision left to the parties all their rights under the laws of expropriation. 26 An., p. 483. But that very reservation, to which, it must be understood, the petition refers, seems to concede what it is submitted, is clear from the decisions, that the decision of the Supreme Court of the State was against the Company on the asserted right to the lands derived from the legislative acts.

But in the instant case the Circuit Court decided in favor of the railroad company upon the ground that the judgment of the Supreme Court was *res judicata* in favor of the company. See decision, Rec., p. 81. From that decision the appeal herein is taken.

Since the appeal from the judgment of the Circuit Court, an important change has been effected in the frame of the municipal government of the city of New Orleans.

By the act of the legislature, No. 133 of 1880, a new corporation has been carved out of the previous city government, called the Board of Liquidation of the city debt. It is charged with the settlement of the bonded debt of the city.

In addition to the taxes levied to pay the debt, of which the Board is to take charge, there is transferred by the law to the Board all property, real and personal, not dedicated to public use, to be sold and disposed of by the Board, the proceeds of which the Board is required to apply to the payment of the bonded debt. With reference to all such property the City of New Orleans, that is the corporation bearing the name, is stripped of all power. It can make no disposition of it. It must be transferred to the Board, who alone can dispose of it. All such property is covered by a trust in favor of the bond cred-

itors, and the trustee with the title to that property is this Board of Liquidation. See Act of 1880, No. 133, the main provisions of which are printed in the appendix.

On the 11th October, 1882, the City of New Orleans, without and against the consent of the Board of Liquidation, undertook to dismiss the appeal in this case, involving, as this controversy does, a portion of the land of the City of New Orleans, manifestly not dedicated to public use, and therefore within the class of assets of the City conveyed by the act to the Board of Liquidation; the further stipulation of this compromise is that the Railroad Company shall forever be quieted and confirmed in the land involved in this controversy and covered by the legislative acts; in effect, the agreement confirms and alienates to the Company land of the City of New Orleans, not dedicated to public use, for the sum of forty thousand dollars.

See agreement filed with motion to dismiss.

The Board of Liquidation maintains it has succeeded to the title to this property for the purposes of the trust created by the act of 1880; that the City has no right to dismiss this appeal, involving that property; that the Board is entitled to be admitted of record, to maintain the appeal herein, and resist the motion to dismiss the appeal

ARGUMENT.

The Board is a political corporation created by the Legislature, with well defined functions, and is competent to stand in judgment with respect to any property and assert the title to which the law vests in the Board, for purposes of public trust. The Board is of that class which the law terms quasi municipal political corporations, and they possess the usual attributes of corporations, including, of course, the power to sue and be sued, and assert judicially any right it possesses.

See Angell and Ames on Corporations, S. 23, p. 15.

In 1876 the Legislature enacted that no City property of any kind or nature, should thereafter be sold or conveyed in any

manner, unless the proceeds be applied to pay the bonded or floating debt. The title of the Board of Liquidation to the assets transferred to it, is thus stated in the act, "it shall be the duty of the City of New Orleans to transfer to the Board of Liquidation all property, both real and personal, not dedicated to public use, to be disposed of by the Board on such terms as to it may seem favorable," the proceeds to be deposited to the credit of the City debt fund, and the fund is to be used to satisfy the bonds. See Sections 8th and 9th of the Act No. 133, of 1881. See Acts of 1876, p. 56, S. 10th, appendix. These provisions vest in the Board, for the trust stated in the act, all property of this City that can be made available to pay the public creditors, that is, all property except markets, schools, wharves, engine houses, etc. The City has no power over said property. It is submitted that with respect to such property, the Board of Liquidation is the competent party to stand in judgment.

The batture in front of the city above Canal street not required for streets and wharves, is within the class of property not dedicated to public use. A portion of this batture was treated as subject to alienation in 1850, divided into lots, sold and proceeds divided between front proprietors and the Second Municipality, the then division of the City Government. 26 An. p. 480. In the case between these parties, reported in same volume, p. 485, the parties are left to their rights, under the expropriation statutes. The Railroad has been in actual occupancy of the land since the litigation commenced years since. The City of New Orleans now proposes to confirm the Railroad Company, in its possession of the land, for the consideration of $40,000. It is submitted, that land of the city of New Orleans, adjudged by the Supreme Court to be its property; in point of fact, not in use by the public, but occupied as private property; treated as property susceptible of sale and alienation both by the State and City, and as subject to expropriation by the courts, must be held to be property not dedicated to public use, within the sense of the legislative acts, which transfers such property to the Board of Liquidation.

The motion of the Board is, that as it has been created since this appeal was taken, clothed with the title to the property and with the sale and disposition, for the purposes stated in the act, that it be admitted as the appellant upon the record.

Respectfully submitted. Merrick & Munn
Hoy & Miller
Attys for Appts

As to the question of making these parties in this Court, whose rights have arisen since the appeal

Harrison vs Nixon. 9 Pet. 485, 494, 505.
Hendon vs Howard. 9 Wall. 664.
Planters Bk vs Bacas. 2 La. Annual 430
referring to 6th Wheat 263
Munn vs Potomac Co. 8 Pet. 281

name, is stripped of all control over that class of property. It has no power to sell it, or deal with it. The Board of Liquidation, therefore, submits it has the legal capacity to stand in judgment with respect to the land of the City, involved in this suit, and should be substituted of record as the appellant herein.

Respectfully submitted,

See appendix on reverse

APPENDIX.

No. 133.] AN ACT

To liquidate the indebtedness of the city of New Orleans, and to apply its assets to the satisfaction thereof; to create a board of liquidation, and prescribe their duties; and to provide for a fiscal agent and for the levying of a sufficient tax to pay said interest.

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That for the purpose of liquidating, reducing and consolidating the debt of the city of New Orleans, as hereinafter specified, a permanent syndicate of six citizens of the said city is hereby created. The said syndicate shall be chosen as follows: two by the Governor of the State of Louisiana, two by the Lieutenant Governor, and two by the Speaker of the House of Representatives, and the Mayor of the city of New Orleans, the Treasurer and the Controller thereof, as hereinafter provided, shall be *ex-officio* members of said syndicate; *provided*, that in case no change is made in the present city government, the present commissioners of the consolidated debt, shall act as *ex-officio* members of said syndicate, and the members of the syndicate so named shall fill all vacancies in their number from death, resignation or otherwise.

SEC. 2. *Be it further enacted, etc.*, That the commissioners of the consolidated debt, or the city officers provided and named in section one of this act, and the *syndicate hereby created, shall* constitute a board of liquidation of the city debt, and the said board shall have exclusive control and direction of all matters relating to the bonded debt of the city of New Orleans. The board of liquidation shall cause to be prepared bonds of the city of New Orleans, which bonds shall be used only for the purpose of negotiation or of exchange, as hereafter provided. The said bonds shall be signed by the Mayor and countersigned by the Administrators of Accounts and of Finance, or such officer or officers as may be hereafter created to fill their respective functions. They shall be made payable in fifty years from the day of the approval of this act, and bear interest at the rate of four per cent. per annum, from the date of said bonds, payable semi-annually, on the first day of April and October of each year, said interest represented by one hundred coupons annexed to each bond. The said bonds and interest coupons annexed may be issued for such sums as may be deemed most convenient by the board of liqui-

dation, and be made payable at such place or places as may be designated in the bond; but the said bonds shall be made payable, interest and principal, in lawful money of the United States; and the said board of liquidation shall be and it is hereby empowered and authorized to establish in New York, London, Paris and Amsterdam such agencies as they may see fit and desirable.

SEC. 3. *Be it further enacted, etc.*, That the board of liquidation of the city debt be and it is hereby authorized and empowered to retire and cancel the entire valid debt of the city of New Orleans, except the floating debt created up to the date of the passage of this act, whether represented by bonds of various classes or by judgments, either by the sale of the new bonds created under this act and appliance of proceeds to the purchase of such old obligations, or by exchange of the new bonds against said old obligations, on such terms as may be agreed upon between the holders of the said old obligations and the board of liquidation; *provided*, the new bonds shall not be sold for a less sum than eighty cents, in cash, on the dollar, and that no exchange shall be made at a greater rate than fifty cents in new bonds per one dollar of the face value of the old obligation with interest accrued thereon; *and provided further*, that the entire issue of new bonds sold or exchanged, as above provided, shall not exceed in all ten millions of dollars.

* * * * *

SEC. 5. *Be it further enacted, etc.*, That it shall be the duty of the city authorities, as soon as possible after the organization of the board of liquidation of the city debt, to turn over and transfer to the said board all the property of the city of New Orleans, both real and personal, not dedicated to public use, and the board of liquidation shall be and is hereby empowered and authorized to dispose of said property on such terms and conditions as may be deemed favorable; the proceeds of such sale or sales to be deposited with the fiscal agent of the board at credit of "city debt fund."

* * * * *

SEC. 8. *Be it further enacted, etc.*, That the surplus arising from the collection of the debt and interest tax, or from the sale of assets in the hands of the board of liquidation of the city debt, after paying the interest coupons of the bonds issued under this act, shall be used for the purchase and retirement of any valid bonds of the city of New Orleans heretofore created, at the rate not exceeding fifty cents per dollar, or, at the discretion of the board, for the retirement of the bonds created under this act at a price not exceeding par; and the bonds or obligations purchased, exchanged or retired shall be canceled and destroyed by the said board of liquidation, after public notice of the same shall have been given in the official journal of the city of New Orleans, and in the presence

of such witnesses as may desire to attend. A *proces verbal* of the same, giving the amounts, numbers, dates and other particulars, for identification of the obligations destroyed, shall be made out and sworn to by a majority of the board of liquidation, and published within ten days of such destruction in the official journal of the city of New Orleans.

108-15

IN THE

Supreme Court of the United States.

THE CITY OF NEW ORLEANS, APPELLANT,
vs.
THE NEW ORLEANS, MOBILE AND TEXAS RAILROAD COMPANY.
No. ~~X~~ 7

The Board of Liquidation of the City Debt, a corporation duly organized under the laws of the State of Louisiana, by leave of the court first had and obtained, moves the court for an order allowing said board to prosecute the appeal in said above-entitled cause in the name and stead of said appellant; hereby offering to give to said appellant a bond, in such penal sum as this court may direct, to indemnify said appellant for all costs and charges that may hereafter accrue in consequence of the further prosecution of said appeal; and assigns the following reasons for said motion:

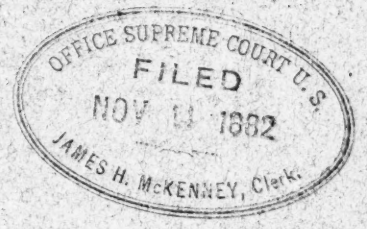
First. That since the passing of the decree in said cause in the court below, and since the appeal therefrom was perfected, and the record duly filed in this court, all the rights and titles therein claimed by said appellant have vested in the said Board of Liquidation of the City Debt, by operation of Act No. 133 of the General Assembly of the State of Louisiana, approved on the tenth day of April, A. D. 1880, entitled "An act to liquidate the indebtedness of the city of New Orleans, and to apply its

assets to the satisfaction thereof; to create a board of liquidation, and prescribe their duties; and to provide for a fiscal agent and for the levying of a sufficient tax to pay said interest."

Second. That the said appellant, disregarding the rights of the said Board of Liquidation of the City Debt, and disregarding the duty of said appellant in the premises, and without authority and contrary to law, has assumed to enter into an agreement with the said appellee, compromising the said case without the consent of the said board, and against its will, and upon most unjust and inequitable terms, whereby the large and valuable property involved in said litigation is transferred to the said appellee for an entirely insufficient consideration, and the bondholders of the city of New Orleans thereby injured and their rights impaired; and that in pursuance of the stipulations of said compromise, the said appellant is now before this court, insisting upon the dismissal of said appeal, which dismissal, if allowed, will have the effect of confirming the said unjust and wrongful transfer of titles to said appellee, and leave the said Board of Liquidation of the City Debt, and the bondholders of said city, entirely remediless in the premises.

R. T. MERRICK,
HENRY C. MILLER,
Attys. for Bd. of Liquidation.

108-15



UNITED STATES SUPREME COURT.

No. 47

CITY OF NEW ORLEANS

versus

NEW ORLEANS, MOBILE AND TEXAS RAIL-RAILROAD COMPANY.

Appendix containing the Act of 1880. Facts Statutes &c

L. Graham & Son, Print, 127 Gravier Street.

assets to the satisfaction thereof; to create a board of liquidation, and prescribe their duties; and to provide for a fiscal agent and for the levying of a sufficient tax to pay said interest."

Second. That the said appellant, disregarding the rights of the said Board of Liquidation of the City Debt, and disregarding the duty of said appellant in the premises, and without authority and contrary to law, has assumed to enter into an agreement with the said appellee, compromising the said case without the consent of the said board, and against its will, and upon most unjust and inequitable terms, whereby the large and valuable property involved in said litigation is transferred to the said appellee for an entirely insufficient consideration, and the bondholders of the city of New Orleans thereby injured and their rights impaired; and that in pursuance of the stipulations of said compromise, the said appellant is now before this court, insisting upon the dismissal of said appeal, which dismissal, if allowed, will have the effect of confirming the said unjust and wrongful transfer of titles to said appellee, and leave the said Board of Liquidation of the City Debt, and the bondholders of said city, entirely remediless in the premises.

R. T. MERRICK,
HENRY C. MILLER,
Attys. for Bd. of Liquidation.

108-15

OFFICE SUPREME COURT U.S.
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JAMES H. McKENNEY, Clerk.

UNITED STATES SUPREME COURT.

No. 97

CITY OF NEW ORLEANS

versus

NEW ORLEANS, MOBILE AND TEXAS RAIL-RAILROAD COMPANY.

Appendix containing the Act of 1880. Facts Statutes &c

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UNITED STATES SUPREME COURT.

No. —.

CITY OF NEW ORLEANS.

versus

THE NEW ORLEANS, MOBILE AND TEXAS RAILROAD COMPANY.

Appendix containing the Act of 1880.

APPENDIX.

No. 133.] AN ACT

To liquidate the indebtedness of the city of New Orleans, and to apply its assets to the satisfaction thereof: to create a board of liquidation, and prescribe their duties; and to provide for a fiscal agent and for the levying of a sufficient tax to pay said interest.

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That for the purpose of liquidating, reducing and consolidating the debt of the city of New Orleans, as hereinafter specified, a permanent syndicate of six citizens of the said city is hereby created. The said syndicate shall be chosen as follows: Two by the Governor of the State of Louisiana, two by the Lieutenant Governor, and two by the Speaker of the House of Represenatives, and the Mayor of the city of New Orleans, the Treasurer and the Controller thereof, as hereinafter provided, shall be *ex-officio* members of said syndicate; *provided*, that in case no change is made in

the present city government, the present commissioners of the consolidated debt shall act as *ex officio* members of said syndicate, and the members of the syndicate so named shall fill all vacancies in their number from death, resignation or otherwise.

SEC. 2. *Be it further enacted, etc.*, That the commissioners of the consolidated debt, or the city officers provided and named in section one of this act, and the *syndicate hereby created, shall* constitute a board of liquidation of the city debt, and the *said board shall have exclusive control and direction of all matters relating to the bonded debt of the city of New Orleans.* The board of liquidation shall cause to be prepared bonds of the city of New Orleans, which bonds shall be used only for the purpose of negotiation or of exchange, as hereafter provided. The said bonds shall be signed by the Mayor and countersigned by the Administrators of Accounts and of Finance, or such officer or officers as may be hereafter created to fill their respective functions. They shall be made payable in fifty years from the day of the approval of this act, and bear interest at the rate of four per cent. per annum, from the date of said bonds, payable semi-annually, on the first day of April and October of each year, said interest represented by one hundred coupons annexed to each bond. The said bonds and interest coupons annexed may be issued for such sums as may be deemed most convenient by the board of liquidation, and be made payable at such place or places as may be designated in the bond; but the said bonds shall be made payable, interest and principal, in lawful money of the United States; and the said board of liquidation shall be and it is hereby empowered and authorized to establish in New York, London, Paris and Amsterdam such agencies as they may see fit and desirable.

SEC. 3. *Be it further enacted, etc.*, That the board of liquidation of the city debt be and it is hereby authorized and empowered to retire and cancel the entire valid debt of the city of New Orleans, except the floating debt created up to the date of the passage of this act, whether represented by bonds of various classes or by judgments, either by the sale of the new bonds created under this act and appliance of proceeds to

the purchase of such old obligations, or by exchange of the new bonds against said old obligations, on such terms as may be agreed upon between the holders of the said old obligations and the board of liquidation; *provided*, the new bonds shall not be sold for a less sum than eighty cents, in cash, on the dollar, and that no exchange shall be made at a greater rate than fifty cents in new bonds per one dollar of the face value of the old obligation with interest accrued thereon; *and provided further*, that the entire issue of new bonds sold or exchanged, as above provided, shall not exceed in all ten millions of dollars.

SEC. 4. Unimportant—refers to fraudulent bonds, and provides they shall not be funded, unless ordered by judge.

SEC. 5. *Be it further enacted, etc., That it shall be the duty of the city authorities*, as soon as possible after the organization of the board of liquidation of the city debt, to turn over and transfer to the said board all the property of the city of New Orleans, both real and personal, not dedicated to public use, and the board of liquidation shall be and is hereby empowered and authorized to dispose of said property on such terms and conditions as may be deemed favorable; the proceeds of such sale or sales to be deposited with the fiscal agent of the board, at credit of "city debt fund."

SEC. 6. *Be it further enacted, etc.,* That nothing in this act shall be construed as affecting or in any manner impairing the act 31 of 1876, commonly known as the "Premium Bond Act," but it will be the duty of the city authorities to turn over and transfer to the board of liquidation of the city debt all moneys collected on account of the tax levied in accordance with the provisions of the premium bond act, and it shall be the duty of the board of liquidation to apportion the proceeds of said tax, and apply the same pro rata, and in the proportion which

each form of bonded debt shall bear to the entire amount of the city debt; and such portions of the said proceeds of the tax as shall not properly belong to the outstanding amount of premium bonds shall be applied to the payment of interest of the bonds created under this act.

SEC. 7. Unimportant. Makes it felony for a board of liquidation to misappropriate funds of the board.

* * * * * *

SEC. 8. *Be it further enacted, etc.*, That the surplus arising from the collection of the debt and interest tax, or from the sale of assets in the hands of the board of liquidation of the city debt, after paying the interest coupons of the bonds issued under this act, shall be used for the purchase and retirement of any valid bonds of the city of New Orleans heretofore created, at the rate not exceeding fifty cents per dollar, or, at the discretion of the board, for the retirement of the bonds created under this act at a price not exceeding par; and the bonds or obligations purchased, exchanged or retired shall be canceled and destroyed by the said board of liquidation, after public notice of the same shall have been given in the official journal of the city of New Orleans, and in the presence of such witnesses as may desire to attend. A *proces verbal* of the same, giving the amounts, numbers, dates and other particulars, for identification of the obligations destroyed, shall be made out and sworn to by a majority of the board of liquidation, and published within ten days of such destruction in the official journal of the city of New Orleans.

SEC. 9. Unimportant—provides for registry of bonds and for issue of certificates, and why holder prefers it.

SEC. 10. Unimportant—provides for office and office expenses of Board.

SEC. 11. *Be it further enacted, etc.*, That the City Council be and is hereby required to levy an annual tax, calculated upon the assessment of the preceding year, less twenty per cent., sufficient to pay in full the interest on all the bonds issued under the provisions of this act, and any tax levied shall continue in force until superceded by a new levy for the same purposes.

SEC. 12. *Be it further enacted, etc.*, That all parts of all laws in conflict with this act be and the same are hereby repealed.

(*Extract from Act No.* 31 *of* 1876—*the Premium Bond Act referred to in the Act of* 1880—*all other portions being unimportant.*)

SEC. 10. *Be it further enacted, etc.*, That no city property of any kind shall hereafter be sold or conveyed in any manner, except the proceeds be applied to the reduction of the bonded or floating debt.

The stipulations of the compromise of 1820 between the city and the riparian proprietors are as follows (printed Rec. pp. 79, 80, et seq): This compromise being one of the sources of the title of the city to the batture property, portions of which is involved in this suit.

The act first recites the names of the contracting parties, i. e., the city and the batture owners, and then proceeds in its material parts, as follows:

The said appearers of the first part, i. e. the batture owners, as well in their own personal names as in their respective capacities, and as actual possessors of the batture in front of the faubourg St. Mary, or representing them, wishing to favor the public in the use of the river bank which lies in front of said batture, and to facilitate the communication of the streets which shall open thereon, do by these presents make donation inter vivos and irrevocable, and in the best form a donation can be made, to the mayor, aldermen, and inhabitants of New Orleans, represented by the honorable Joseph Rouffignac, mayor of said city, here present, accepting and stipulating for the said mayor, aldermen, and inhabitants, by virtue of the authority vested in him by the resolution of the City Council of 21st August last, a copy whereof in due form is hereto annexed, all the rights which the said donors have or can have, each so far as he is concerned.

1°. In all that portion of the said batture or alluvion which exists from the lower limit of the property of William W. Montgomery and running down to the boundary line between the city and the faubourg St. Mary, and then from the foot of

the new levee from its outer side to the marginal line of the waters of the river when they are at their lowest stage.

2°. In the new levee which has been constructed on the whole extent of the said portion of batture, as well as the land upon which it rests, just as the said levee shall be when it shall have been repaired, enlarged, and provided with a wooden revetment in its whole extent by the said donors, as it is hereinafter agreed.

3°. In the land neceesary for the extension of the streets of said faubourg to the new levee, which shall be opened, filled up, and provided with platforms and railings on the river at the expense of the donors, as it shall be hereafter prescribed in said act.

4°. In the land of Tchoupitoulas street in the whole extent of said faubourg, giving it a width of sixty feet, including the sidewalks. All of which lots so donated are not subject to any mortgages on the part of the said donors, as it appears from the certificate of the recorder of this city of this date, with the exception of the following, that is to say, mortgages to the amount of thirty-two thousand eight hundred and twenty-nine dollars, granted by Edward Livingston in the manner following, viz:

The present donation is made with the express condition, without which said donation would never have been made, namely:

That all the lots of ground which are the object of the present donation shall remain unalienable, and not subject to seizure for debts or otherwise, in the hands of the corporation of the city of New Orleans, and said corporation shall never, and under no pretext whatsoever (to which clause the said mayor, aldermen and inhabitants of New Orleans, represented as they are, expressly obligate themselves by these presents), sell, exchange, give away, or otherwise dispose of, in whole or in part, in any manner whatever, nor appropriate to other public uses, the said lots of ground, than to that to which they are naturally destined, nor even erect thereon any constructions or buildings, except it would be in the sole and only case where the city council should deem it beneficial to the public interest to authorize the erection of a fire engine upon such

portion of the batture so donated as said council shall designate; it is, however, understood that the restriction to erect buildings or constructions on the part of the corporation shall not be so construed as to prevent the mayor and city council of New Orleans from establishing or causing to be established jetties or wharf to facilitate commerce, should said mayor and city council deem it advisable.

* * * *

And always, in consideration of the present donation and the advantages that may result therefrom to all parties, the said donors bind themselves to demolish or cause to be demolished, at their costs and expenses, within one month from the date of this act, all wooden buildings or wooden constructions now existing upon the batture of faubourg St. Mary, and to cause all materials to be removed therefrom. They also bind themselves, their heirs and assigns, not to erect any houses or buildings upon said batture unless the walls thereof be of brick or stone, or roofed with tiles or other incombustible material. Any houses or buildings erected in contravention of this clause would be demolished at their cost and expense.

And the said mayor, aldermen, and inhabitants of New Orleans, represented as above set forth, bind themselves hereby to have constructed a public market (halle), which shall be placed in faubourg St. Mary, for and in consideration of the sum of three hundred dollars, to be paid by said donors to the corporation of New Orleans, for each and every lot of 30 feet front on the new levee which they possess in the batture of faubourg St. Mary, no matter what the depths of said lots may be; this payment to be made by giving their respective notes to the order of the mayor of New Orleans, payable in one and two years from the date of this act, each giving a special mortgage upon the lots respectively owned by them upon the batture to secure payment of the notes due at maturity; and in case the sum produced by said notes should be more than sufficient to defray the expense for building said public market, the mayor, aldermen and inhabitants of New Orleans, represented as above, bind themselves to employ the surplus

towards building another public market, which shall be placed in the faubourg Marigny.

And in execution of these present agreements, the said donors did forthwith, in presence of me, notary, and the undersigned witnesses, deliver to the Hon. Joseph Rouffignac, who acknowledges receipt thereof, their respective notes, dated this day, to the order of said Joseph Rouffignac, Mayor of New Orleans, for the lots they respectively possess upon the batture of the faubourg St. Mary, agreeably with the annexed plan, all of which notes were paraphed "ne varietur" for identification with the present act, and were furnished in manner following, viz:

(Here follows description of notes.)

The 11th section of the act of the Legislature of Louisiana, of 1836, dividing the city into municipalities, referring to the property acquired by the city in the compromise of 1820, was as follows, Session Acts, p. 33:

Provided further, that no disposition shall ever be made of the batture in front of the Faubourg St. Mary, in violation of the transaction or compromise, in relation to said batture, entered into between the Mayor, aldermen and inhabitants of the city of New Orleans and Edward Livingston and others, before Hughes Laverque, notary public, on the twentieth of September, eighteen hundred and twenty; and that the municipality of the upper section of the city of New Orleans shall not in any manner obstruct or impede the inhabitants of any portion of the city of New Orleans, in the free use and enjoyment of any of their rights on said batture.

The Act of 1850, relative to the batture under which there was then sold under the act and in pursuance of the compromise of 1850, with the riparian proprietors, a large amount of the batture money, of the proceeds of which sale there was awarded to the city two-thirds, and to the proprietor of one-third (Acts 1850, pp. 197, 198).

And The compromise of 1851 between the city and the batture owners, by which all the batture which at a certain time was

ceded to the city, in full ownership and in perpetuity, in which cession is embraced the land involved in this appeal, was:

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened*, That so much of the eleventh section of the act entitled: "An act to amend an act entitled an act to incorporate the City of New Orleans," approved February seventeenth, eighteen hundred and five, and other acts amending the same, approved March eight, eighteen hundred and thirty-six, as provided; That no disposition shall ever be made of the batture in front of the faubourg St. Mary, in violation of the transaction or compromise in relation to the said batture, entered into between the Mayor, Aldermen and inhabitants of the City of New Orleans, and Edward Livingston, and others, before Hughes Lavergne, Notary Public, on the twentieth of September, eighteen hundred and twenty, be and the same is hereby repealed.

SEC. 2. *Be it further enacted, etc.*, That the Council of Municipality No. Two, be and the same is hereby authorized, and directed to cause to be laid off two streets between New Levee street and the Mississippi river, extending from Montgomery's property down to Common street, as represented on a plan drawn by George T. Dunbar, Surveyor of the said Municipality No. Two, in the year eighteen hundred and forty-six, and approved by the said Council.

SEC. 3. *Be it further enacted, etc.*, That the batture or space of ground adjoining the Mississippi river, and lying between the said river and the street to be laid off in conformity with this act, fronting said river, shall be left open, and so kept for the accommodation of the public, and the convenience of commerce.

SEC. 4. *Be it further enacted, etc.*, That in the event of an agreement between the original parties to the said compromise of eighteen hundred and twenty, for the sale of said batture, it shall be the duty of the said Council of Municipality No. Two, to lay off into lots, all that portion of said batture, not reserved in the foregoing acts for streets, and the accommodation of the public and convenience of commerce, and dispose

of the same, according to the terms and conditions of said agreement; Provided, that, in the aforesaid agreement a provision is made, that one-third of the net proceeds of the aforesaid lots shall be appropriated to the liquidation of the debts and liabilities of the General Sinking Fund of the City of New Orleans.

THE COMPROMISE OF 1851.

First appear the batture owners and the city and the stipulations are as follows:

Which said appears declared that whereas, by the aforesaid act of the twentieth of September, eighteen hundred and twenty, the new levee, now constituting New Levee street, together with all the batture then formed or which might thereafter be formed on the outside of said levee, extending to the water's edge of the river Mississippi, along the front of the then faubourg Saint Mary, from the city line below to the property of W. W. Montgomery above, were ceded and given to the city of New Orleans as property inalienable and not liable to seizure, but to be forever left open for the uses to which it was naturally destined, which said property from that period to the present time has remained in that condition under the administration and at the expense of the city of New Orleans and of the second municipality thereof.

And whereas, the said batture has, in the meantime, increased to such a degree as to be no longer required in its full extent for the purposes contemplated by the parties to the said act;

And whereas, the council of the municipality number two did, on the seventeenth day of June, eighteen hundred and forty-six, approve a plan drawn by George T. Dunbar, for laying out the new streets through the whole extent of said batture between New Levee street and the Mississippi river, extending from Montgomery's property down to Common street, and did propose to sell and dispose of the lots of ground as designated on the said plan;

And whereas, the said batture is increasing every year in extent, and becoming less adapted to the object for which it

was intended by the act of the twentieth of September, 1820, and instead of being an accommodation to the public, and a convenience to commerce, retards business and increases the expenses of the merchants and of the community in general;

Now, therefore, the said appearers having agreed to alter its destination, moreover declared that they had agreed and stipulated, and do by these presents in their several capacities aforesaid agree and stipulate, as follows, to-wit:

First. That three streets, to be named Fulton street, Front street and Delta street, shall be laid out and opened through the said batture according to the plan drawn by said Dunbar and approved by the council, with this difference, viz., that Fulton street and Front street shall be each sixty feet wide, and lots formed to be numbered and to have such form and dimensions as set forth on the plan prepared by Joseph A. Beard, auctioneer, copies of which plans are deposited in this office for reference.

Second. That the lots composing the square or islets between the said three new streets shall be sold at public auction by Beard and May, auctioneers of this city, or by such other auctioneer as may be named by the council of municipality number two and the parties to this act, and it shall be made the duty of such auctioneer or auctioneers to draw up a formal proces verbal of the sale of the said lots, and to sign the same, and to deposit a duplicate thereof with the undersigned notary, and acts of sale of the said property shall be passed before the said notary and shall be signed by the finance committee of the said council and by the purchaser or purchasers, and acts of sale thus signed shall be binding upon all the said parties of the second part as vendors. That the said auction sales shall be made after advertisement in at least two newspapers published in New Orleans, and shall be continued from time to time until all the lots are sold. That the lots in the squares between New Levee and Fulton streets shall be sold in the winter of 1851 and 1852, unless the sale shall be postponed by consent. That the lots in the squares between Fulton and Front streets shall be sold in the winter of 1852 and

1853, unless the parties to this act shall consent and agree to some other time of sale, with the exception of the two squares bounded by Poydras, Fulton and Girod streets and the river, which are not to be sold until, in the opinion of the council of municipality number two, they can be improved without interfering with the space necessary for the convenience of commerce at that part of the landing. That the lots in the squares between Front and Delta streets shall be brought into the market and sold whenever the council of municipality number two shall determine the same to be susceptible of private ownership and no longer necessary for the convenience of commerce. That the said lots shall be sold on the following terms and conditions, to wit: One-fifth of the price to be paid in cash, and the balance in equal instalments (divided into coupons if necessary) in one, two, three and four years, with six per cent. interest from the day of sale, and eight per cent. per annum after due, the payment whereof shall be secured by special mortgage on the property sold.

Third. That immediately after the sale of the property aforesaid or of any portion thereof, the proceeds, whether in cash or notes, or both, after deducting the necessary costs and expenses attending the sale alone, shall be divided and distributed in the manner following, to wit: One-third shall be paid and delivered to the proper persons authorized by law to receive the same, to be applied to the payment of the old city debt or general sinking fund of the city of New Orleans. One-third shall be paid and delivered to the original parties to the contract of the twentieth of September, eighteen hundred and twenty, or the heirs and legal representatives thereof, whose assent is given to the present agreement, each one respectively to receive respectively in proportion to the front of the lots, or portions of grounds originally owned by him as shown by the said contract: and the remaining one-third of said proceeds shall be paid and delivered to the treasurer of the said Municipality No. Two, for the exclusive use and benefit of the said municipality.

Fourth. And it is moreover well understood and agreed to

by and between the said parties, that the said one-third part of the proceeds coming to the said parties of the second part shall be paid over to each of them, in the proportion hereinbefore set forth, by the undersigned notary as soon as practicable after the sales aforesaid; it being well understood also that in the said three grand divisions of the said proceeds the notes to be divided shall be so aranged as to be as nearly as possible equalized between the said three parties so far as the responsibility and standing of the several drawers thereof are concerned.

Fifth. That three quarters of lots of ground between North Market and South Market streets, and designated on the plans as markets, shall belong to the said Municipality No. Two, upon the condition that the said municipality shall erect thereon market houses or other public buildings, or shall leave the same open as public squares, and shall in no event dispose of or sell the same as private property *and that all the portion of the batture between Delta street and the river Mississippi above Lafayette street to the line of Montgomery's property, and all that portion of the batture between Front street and the river Mississippi, from Lafayette street down to Canal street, shall be and the same is hereby vested in perpetuity and full ownership in the said Municipality No. Two, in favor of whom said appearers to this act hereby cede and relinquish forever all their claims in and to the batture, as well as all and every enlargement thereof or accretion thereto by new formations.*

And finally, it is well understood and agreed to, by and between the said contracting parties, that this agreement or compromise is in no manner to change, alter or prejudice the position or claims, of any kind or nature whatsoever, which may now exist or which may hereafter arise among or between any of said parties of the second part to any particular amount or portion of the said one-third of the proceeds of the sale of the property aforesaid.

To show the land awarded in this suit, forming part of the batture accruing to the city under the compromises of 1820 and of 1850, granted by the Legislature to the Railroad Com-

pany, and the grants thereof, the Court is referred to the following portions of the legislative acts bearing on the subject, the validity of these grants, i. e., the competency of the Legislature to grant to the company, this batture property of the city, is the question raised on this appeal.

THE FIFTEENTH SECTION OF ACT No. 26 OF 1869, SESSION ACTS OF THAT YEAR, p. 28.

"*Be it further enacted, etc.*, That the said company, with the consent of the owners of lands fronting upon any navigable water course, or after such lands have been acquired by the company, by purchase, release, donation or in any other manner, in accordance with the laws of the State of Louisiana, may erect, construct and thereafter maintain and use wharves, warehouses, depots or other buildings and structures, in and upon the margins, or upon the portions of the margins, reserved to public use, of any and all navigable rivers, bayous or water courses in the State of Louisiana, whenever the same may be deemed, by a majority of the directors of the company, necessary and requisite for the legitimate and convenient transaction of its business. And within the limits of incorporated cities or towns, the Mayor and a majority of the council of such city or town may authorize the construction of said wharves, warehouses, depots or other buildings and structures, in front of all public squares or streets that may be bounded by such navigable water courses. *And be it further enacted*, That the said company, for the purpose of connecting its railroad with the railroad of other companies, and with mines and manufactories within the State of Louisiana, is hereby authorized and empowered to construct, maintain and use, by running thereon its engines and cars, such branch railroads and tracks as it may find necessary and expedient to own and use; and also to extend, with two tracks and necessary turnouts, its railroad, heretofore authorized by the State of Louisiana, upon the neutral ground in Claiborne street, in the City of New Orleans, upon and along said neutral ground in Claiborne street to Toledano

street, in said city; thence by such a course or route as shall be deemed most proper and expedient by a majority of the directors of said company, to a junction with the line of the railroad which the said company has been heretofore authorized by the State of Louisiana, to construct westerly, from the City of New Orleans; *provided, however*, that for its crossing of the new canal in the City of New Orleans the said company shall construct and maintain a drawbridge in the same manner as has been heretofore authorized by the State of Louisiana for the crossing of Carondelet Canal by the railroad of said company; *and there is hereby granted to the said company the right to locate, construct, maintain and use a passenger depot with offices and apartments, suitable for its legitimate business, upon that part or portion of the levee or streets and grounds in the City of New Orleans, bounded by Canal, Delta and Poydras streets, and a line parallel to and one hundred and fifty feet easterly from Delta street; and for the construction of a freight depot, and for other purposes of its legitimate business, to enclose and occupy the blocks of ground, parts of streets and portions of levee in said city bounded by Girod, Water and Calliope streets and a line parallel to and two hundred and ninety feet easterly from Water street; provided, said company shall not enclose or occupy that part or portion of the blocks of ground within said named limits, which is the private property of individuals until said company has acquired the title thereto;* and said company shall thereafter, if requested by said city, extend the wharf in front thereof equal with the present wharf in front of the northerly corner of the outer block within said limits, recently sold by said city and now owned by said company. *And be it further enacted*, That the said company is hereby authorized and empowered to locate, construct and build, and thereafter to own, maintain, manage and use a railroad with one or more tracks and suitable turnouts, from any point upon the main line of its railroads, as the same shall be hereafter located in the Parish of St. Landry or Calcasieu, towards and to any point upon the line between the Sate of Louisiana and

the State of Texas, in or south of the Parish of Rapides; and all the powers, privileges, grants and franchises which have been heretofore granted to said company, and all the powers, privileges, grants and franchises which are by this act granted to said company for the construction and maintenance of its main line of railroad within the State of Louisiana, shall be and are hereby made applicable to said branch railroad, and for all the purposes of this act, the said branch railroad shall be deemed and taken to form and constitute a part of the said main railroad within the State of Louisiana, in this act designated and referred to."

THE FIFTH AND SIXTH SECTIONS OF THE ACT NO. 31 OF 21st FEBRUARY, 1870, SESSION ACTS, pages 55, 58 and 59.

SEC. 5. That the grant made to the said company in and by the act entitled "An Act to expedite the construction of the railroad of the New Orleans, Mobile and Chattanooga Railroad Company, in the State of Louisiana," approved February 17, 1869, of "the right to locate, construct, maintain and use a passenger depot with offices and apartments suitable for its legitimate business, upon that part or portion of the levee or streets and grounds in the City of New Orleans, bounded by Canal, Delta and Poydras streets and a line parallel to one hundred and fifty feet easterly from Delta street, and for the construction of a freight depot, and for other purposes of its legitimate business, to enclose and occupy the blocks of ground, parts of streets and portions of levee, in said city, bounded by Girod, Water and Calliope streets; *provided*, said company shall not enclose or occupy that part or portions of the blocks of ground within said last named limits, which is the private property of individuals until said company has acquired the title thereto," be and the same is hereby confirmed and is declared to be, and is and shall be, in exclusion of any and all claim or claims on the part of the City of New Orleans to the possession, occupancy, use, or disposition of, or control over, the said premises or any part thereof, and for all compensation therefor. *And the Mayor and Common Council of said*

city, and all the municipal authorities thereof, are hereby prohibited from, and declared incapable of, passing any ordinance or in any way obstructing the enjoyment thereof by the said company, or of any benefits or advantages to be derived therefrom. And all ordinances heretofore passed, or which shall hereafter be passed, and any act done, or to be done, by said Mayor and Common Council purporting or intended to convey or grant to any party or parties, other than the said New Orleans, Mobile and Chattanooga Railroad Company, the right to possess, use and enjoy, or to dispose of, or exercise any control over, the said premises herein above mentioned and described, or any part thereof, are hereby declared and shall be treated and held to be utterly null and void to all intents and purposes. And all persons are forbidden to enter upon or interfere with the said premises, or any portion thereof, under any such pretended ordinance, and all such acts are hereby declared trespass, and all persons who shall commit them, or any of them, shall be held to be, and may be proceeded against as wrongdoers.

SEC. 6. That all that portion of the levee or streets and grounds in the city of New Orleans lying within the following named limits and boundaries, viz.: the southerly (or upper) line of Canal street, from the Mississippi river to the easterly line of Water street, the easterly line of Water street from the southerly line of Canal street to the southerly (or upper) line of Girod street, the southerly line of Girod street from the easterly line of Water street to the easterly line of the lands designated for the location of the freight depot of the New Orleans, Mobile and Chattanooga Railroad Company, the easterly line of said depot lands from the southerly line of Girod street to the northerly (or lower) line of the batture rights owned by said company, the northerly (or lower) line of the batture rights from the said depot lands to the Mississippi river, and the Mississippi river from the northerly (or lower) line of said batture rights to the southerly line of Canal street, is hereby expressly dedicated to public use, and shall forever remain open for such use, and no part of such lands, or of the accretions and the wharf in front of the same, shall ever be

enclosed or built upon, or granted for ferry landings, or exclusively appropriated or used by any individual or individuals, corporation or corporations, or by the municipal authorities of the city of New Orleans; provided, however, that the said Company may construct, maintain and use across or upon said lands, or any part thereof, its railroad tracks, turnouts and switches, from its main track on Water street, as may be necessary for purposes of ingress to or egress from its depot. And the said City of New Orleans and the Mayor and Common Council and all the municipal authorities thereof are hereby expressly prohibited from passing any ordinance, making any grant, entering into any contract, or doing any act inconsistent with the provisions of this section of this act, o which shall prevent or hinder the laying of the tracks of the railroad of the said New Orleans, Mobile and Chattanooga Railroad Company within the corporate limits of the City of New Orleans, upon the lines or routes heretofore authorized by the State of Loui iana, and which have been surveyed and located therefor, or which have been designated upon the maps of such tracks filed by said company, or which may be hereafter surveyed and located therefor, in or upon the streets of the said city, or in or upon any other lands in the said city, or which shall obstruct, disturb or interfere with such tracks, or with the full, free and perfect enjoyment and use thereof by the said company when land upon such routes and lines; and any and all ordinances, grants, contracts or acts in violation hereof heretofore passed, made, entered into or done, or hereafter to be passed, made, entered into or done by the said city of New Orleans, or the Mayor and Common Council or the municipal authorities thereof are hereby declared illegal, null and void, and the same shall be so treated and held in all places and under all circumstances.

Here is introduced the following plan showing location and extent of the land granted to the railroad company. (See Rec., p. 61, Pilie's testimony, and map of which the following is a copy :)

THE DECISIONS OF THE SUPREME COURT OF THE STATE

on the validity of these grants are as follows. These decisions were made prior to the institution of the suit, removed to the United States Circuit Court, in which the appeal in the case now here, was taken :

No. 3692. 26th Louisiana Ann., p. 517.

The New Orleans, Mobile and Chattanooga Railroad Company

versus

The City of New Orleans et als.

Printed Record, pp. 51 et seq.

This controversy arises out of the acts 19th March, 1868, 17th February, 1869, and 21st February, 1870, granting to the New Orleans, Mobile and Chattanooga Railroad, for passenger and freight depots, a space of ground equal to about four squares on the batture or levee in front of the City of New Orleans, between Calliope and Canal streets, and also granting the right to lay tracks and occupy as a railroad a strip of land extending down the levee to Elysian Fields street, and out said street to Claiborne street and beyond it. The plaintiffs took possession and enjoined the City of New Orleans and other parties from interfering with them in any manner.

The city denied the validity of the grant on the ground that the State had no right, title, or interest in the property; and alleged that the batture and street in question belonged to it, and the State could not make the divestiture or deprive New Orleans and its inhabitants of the use of said public place and highway without the exercise of the right of eminent domain, and this respondent further says that the construction of the New Orleans, Mobile and Chattanooga Railroad by the route contemplated through the city and the running therein passenger and freight trains propelled by steam engines or locomotives, and the enjoyment of the grant and the privileges set forth and contained in the several acts referred to, will preven the use of the batture and Elysian Fields street as a locus pub licus and a highway, will destroy the dedications thereof to the public, and will give the plaintiffs the exclusive use of property

which belongs to and is needed by New Orleans and its inhabitants.

The Court maintained the demand of the plaintiffs, and perpetuated the injunction. The City of New Orleans appealed.

By consent of parties the issue as to the Pontchartrain Railroad Company, joined as co-defendants herein, is reserved from the present decision, and as to them the case is indefinitely continued.

The question is, Had the General Assembly *had* the right to grant the New Orleans and Chattanooga Railroad Company, for freight and passenger depots and tracks, the property in controversy? If the fee or title to the soil belonged to the State, and its use as public places ceased to be necessary, of course the State, as the proprietor, could make the grant. But it is shown that the State had no title whatever to the property, and it is proved beyond question that its use is necessary for the public. The title of the city to this property is as clear and well established as the title of any political corporation can be to common property, or property dedicated to public use. That portion of the batture given for depots between Calliope and Canal streets was undoubtedly the property of Livingston and the other riparian proprietors who conveyed it to New Orleans and dedicated it to public use in the act of donation or compromise of 1820. This cession and dedication was recognized and approved by the Legislature.

The batture in front of the old city was reserved for and and dedicated to public use when the city was laid out in 1824, and since that time it has been used as a levee or quay. If the fee or title to the soil remained in the sovereignty of France it passed to the United States by session, because France ceded forever and in full sovereignty the Territory of Louisiana, with all its rights and appurtenances. The ground in question therefore passed to the United States if it was public property, and it was not transferred to the State of Louisiana when it was admitted into the Union, because the convention which framed the constitution acceded to the terms upon which Congress admitted the State into the Union, and by an ordinance forever renounced all right or title to the

waste or unappropriated lands. This was expressly decided in the case of De Armas, 5 L., 207. In a controversy between New Orleans and the United States in relation to the ground in question it was decided in 1836, by the highest tribunal of the land, that the United States was without title. (10 Peters, 662.)

That Elysian Fields street was conveyed to New Orleans and dedicated to public use by Bernard Marigny, and has been occupied as a public highway since 1805, is not disputed. It is shown that the occupation of these public places by the plaintiffs and the running thereon of passenger and freight trains propelled by locomotives, prevent the use and enjoyment of them by the public, and to a great extent defeat the object of their dedication. The street and quay in question were not granted to New Orleans and dedicated to public use to be owned and occupied by the Chattanooga Railroad. The witness, Captain Leathers: "I am engaged in the steamboat business, commanding str. Natchez; I have been engaged in the business above thirty-five years; during the last thirty years have been making weekly landings at the port of New Orleans, discharging cargoes of cotton principally. I am very familiar with the river business, which is now being done, and which has been done for many years past, on the levee of this city. From the wood-work or wharves back to the houses that line the levee—say from Calliope down to Canal street—there is scarcely room enough to do the river business, by which I mean the business of receiving and shipping freight by the river Mississippi.

"I am very familiar with the levee from Canal down to Jackson square, which is between St. Peter and St. Ann streets. There is not more than enough of levee between Canal street and Jackson square and the houses that front the river, and the river itself, to do the business which is now carried on by steamboats and sea-going vessels.

"I am familiar with the tracks of the Chattanooga Railroad as now laid, say from Calliope street down to Jackson square; the effect of the Chattanooga Railroad, with its passenger and freight trains and many tracks, is to leave the ships and steam-

boats without one-third room enough to do their business. The passing to and fro of those trains and carrying on the business of the road would, in my opinion, have the effect of giving to the road almost if not entirely the exclusive use of the batture or levee. There is constantly through the day and all hours of the day a large number of horses and mules engaged in transporting the river freight to and from the levee to the steamboats and ships and sea-going vessels, and I think the passing of the locomotive up and down the levee would seriously interfere with the teams and drivers; there are frequently instances of those animals being frightened and running away endangering their lives, as also the lives of others. I have seen the cars stopped at the front of my boat several times, entirely blockading my gangway, and stopping my hands from from putting out freight during that time; the road has left no room scarcely between the track and the boats. I am not the only one that has been subjected to this kind of inconvenience; there have been several boats, and many of them. As the business of the road increases the river business will be subject to a corresponding increase of inconvenience, amount almost to an entire deprivation of the use of the levee. The river business is now almost entirely blockaded up from Jackson square to Customhouse street, and from there nearly ruined by the railroad up as far as St. Joseph street, were the Chattanooga road comes to the river and occupies the entire front. To my knowledge the business of the river has been so obstructed by the use of the batture by the Chattanooga Railroad Company that cargoes of cotton at Vicksburg have been shipped to Savannah, and many owners have shipped their cotton to other ports, which otherwise would have come to New Orleans. In my opinion one-half or the sugar crops will go up the river and not land here on that account. The use of the batture by the road as laid down is tantamount to a monopoly of the batture." The testimony of this witness is corroborated by that of a number of other witnesses, and indeed the truth thereof is not controverted.

If a political corporation can be the owner of property, of which there can be no doubt, it alone can exercise the right of

disposition over its property, because the right of disposition is an essential element of perfect ownership. If the State can grant the property of New Orleans, as attempted in the case before us, New Orleans would cease to be the owner of its own property, because it is the owner who has the exclusive right freely to dispose of his property.

Undoubtedly the State can exercise the right of eminent domain and take for public purposes the property of political corporations as well as the property of individuals upon paying the owners the value of the property so taken. But that is not the controversy here. The question is, can the State give the property of New Orleans to the Chattanooga Railroad Company? We think not. But it is contended that as the grounds in controversy were dedicated to public use, therefore they are a part of the public domain of the State, which can be alienated by it. This is a fallacy. The fee or title was never in the the State; therefore these public places form no part of the public domain of the State, and, as we have said, cannot grant what it does not own.

The property of the city dedicated to public use is as much its property as any that it may acquire. Indeed, the streets, walks and quays are more useful and essential to the city and its inhabitants than other property, and they are inalienable by the State. "There can be no difference in principle between ground dedicated as a quay to public use and the streets and alleys of a town; and as to the streets, it may be asked whether the king could rightfully have granted them. This will not be pretended by any one. And it is believed that the public right to a common is equally beyond the power of a sovereign to grant, unless he disposes of it under the power to appropriate property to national use, and then compensation must be paid." (New Orleans vs. United States, 10 Peters, 662.)

"The inhabitants of a town cannot be deprived of their streets, as the streets are essential to the enjoyment of their property; in other words, by closing the streets the value of the value of the buildings of the town would be greatly reduced, if not entirely destroyed. And if ground dedicated to public use, which adds to the beauty, the health, the convenience, and the value

of town property ,be arbitrarily appropriated by the sovereign to other purposes, is not the value of the property which has been bought and sold in reference to it greatly impaired? The value may not be reduced to the same ruinous extent as it would be to close the streets, but the difference is only in the degree of the injury, and not in the principle involved." (10 Peters, 662)

If the State could grant part of the quays and street in question for depots and railroad tracks it could grant the whole; it could grant all the streets and public places, and entirely deprive the city of access to the river, and virtually make its inhabitants prisoners in their own houses. The grant to the plaintiffs differs from this only in the degree of the injury, not in the principle involved. If the State could make the grant it can authorize the enclosure of the tracks, as it did the space given for the depots, and this would virtually close the port of New Orleans, because the enclosure of the tracks, extending most all along the entire front, would cut off communication with the river, and destroy the commerce of the city.

But it is urged that the State can dispose of the property of New Orleans because it granted it corporate powers, and can at will modify or abolish the charter. It is true the powers of government delegated to the city may be revoked and its charter abolished, but it by no means follows that the property of the corporation would pass thereby to the State.

"In respect to public or municipal corporations (says Mr. Kent), which exists only for public purposes, as counties, cities and towns, the legislature, under proper limitations, have the right to change, modify, enlarge, restrain, or destroy them, securing, however, the property for the use of those for whom it was purchased." (2 Kent, 305.)

Nothwithstanding the power of the legislature over the city of New Orleans, its property is protected like that of any other person. (Story on the Constitution, sections 1393, 1399; 2 Peters, 380, 412, 413, 627, 657; 6 Cranch, 67, 134; 4 Hill, 144; 3 Dallas, 386; 8 Wend., 85; 11 Wendall, 56, 61, 63; Cooley on Limitations 486; 21 Penn., 147; 7 Wall., 289; 9 Cranch, 292; 5 Paig, 147; 11 Wend., 157; People ex rel. Failing vs. Commis-

sioners of Town Polantine, 53 Barbour; and 3 American Law Times Reports, page 6; Constitution, art. 110; Constitution of the United States, art 1, section 10.)

In Darmouth College vs. Woodward, 14 Wheaton, Justice Story says: "It may also be said that corporations, such as towns, cities, and counties, may in many respects be subject to legislative control. But it will hardly be contended, in respect to such corporations, that the legislative power is so transcendent that it may at its will take away the private property of the corporation, or change the uses of its private funds, acquired under the public faith. Can the legislature confiscate to its own use the private funds which a municipal corporation holds under its charter without any default or consent of the corporators? If a municipal corporation be capable of holding devices and legacies to charitable uses, as many municipal corporations are, does the legislature, under our forms of limited government, possess the authority to seize upon these funds and appropriate them to other uses, at its own arbitrary pleasure, against the will of the donors and the donees? From the very nature of our government the public faith is pledged the other way. The truth is, the government has no power to make a grant even of its own funds when given to a private person or a corporation for special uses."

The legislature certainly has no greater power that the sovereigns of France and Spain had to the batture or levee in question, and the Supreme Court of the United States held in the case in 10th Peters, referred to, where a part of the identical property was in controversy, that "the public right to the common was beyond the power of the sovereign to grant."

New Orleans or its inhabitants had therefore a right to the levee or quay which could not be defeated, and it was "beyond the power of the sovereign to grant," this property to any one long before Louisiana became a State and long before there was a corporate power to the city. The right to use the batture as a public place therefore exist, independently of the delegation of corporate power, and the modifying or withdrawing thereof, can in no manner affect it. So, therefore, whether the State recalled the power of government delegated to the

city or not is immaterial. The right of the inhabitants cannot be defeated, because the proof shows that the levee is absolutely necessary to public use, and the occupation thereof by the plaintiffs impairs and greatly defeats the object of its dedication.

When a locus public becomes unnecessary for public use, of course the State can change the destination; it then becomes property in commerce belonging to and subject to the will or disposition of the owner, whose rights were in abeyance pending the existence of the charge of servitude. But without the consent of the donors and the donees, as in the case before us, the State cannot take the property dedicated to one purpose and apply it to another. It cannot take the batture granted to New Orleans for a quay, and to be used for the commerce of a river, and give it or any part of it to the Chattanooga Railroad. As the State was utterly without title the grant to the plaintiffs conferred no right whatever to the property. It is useless to argue that the grant to the railroad only give a temporary use of the ground, and that it is subject to be recalled by the State. If the State had the right to make the grant the plaintiffs have the perpetual use of the property, which is equivalent to ownership, and the State cannot recall or in any manner defeat it, because of the provision of the Federal Constitution prohibiting a State from impairing the obligation of a contract.

It is also absurd to argue that the grant is only the exercise of an administrative power over these public places. A grant which confers exclusive use in perpetuity and subjects a thing granted to such debts and encumbrances as the grantee may see fit to impose cannot fairly be called the exercise of merely administrative power over a locus publicus.

The grant virtually changes the destination and passes the title (if the State had any to pass), because it puts the property in commerce and subjects it to exclusive control and disposition of the plaintiff, makes it as the common pledge of their creditors liable to seizure under execution. Here then a considerable part of a locus publicus, proved to be essential to the existing object of the dedication, is granted to a private

corporation in perpetuity, can be sold, mortgaged, and otherwise subjected to their debts, and yet it is gravely argued that this is not a change of destination and a grant of the fee, but is only a mode of regulating or administering a locus publicus which the State can rightfully exercise. The proposition is too absurd to require serious argument to refute it.

After carefully examining the record and considering the authorities and able printed arguments presented by the eminent counsel engaged in this litigation we have come to the conclusion that plaintiffs must fail in their demand, for two reasons, either of which seems to be fatal to their pretensions

1st. Because the legislature could not change the destination of these public places, bring them into commerce, and subject them to the disposition of the plaintiffs while the object of the dedication continues, and it is proved that these public places are now essential to the uses for which they were dedicated to the public.

2d. Because if the State could have changed the destination it could not have granted the property, because the moment the charge or servitude in favor of the public is removed the property stands subject to the will and disposition of its owner, the City of New Orleans, and, like all other property in commerce, it can only be disposed of by the owner.

As the State was not the owner the plaintiffs acquired no title by the grant. Much has been said of State sovereignty and of the power of the State over the city, but we cannot in this controversy adjust the matter or determine the limits of this power, because the State is not a party, and because the solution of the question is not necessary in this case.

The State has simply passed by the grant whatever title it had to the plaintiffs, and this suit is simply a controversy for property between persons holding by different grants. In order, therefore, for the plaintiffs to recover they must show a title superior to the titles of those who granted the property to New Orleans and dedicated it to public use.

So, therefore, whether the public places in controversy can be administered by the State or the city is a question that does not concern the plaintiffs. When it is ascertained, as we have,

that they acquired no title by the grant, their cause of complaint is ended.

It is, therefore, ordered, that the judgment therein be annulled and the injunction be dissolved, and it is now ordered that there be judgment for the City of New Orleans, and that prayer in reconvention for an injunction be granted, and it is ordered that the plaintiffs be restrained and inhibited from occupying the property in controversy.

It is further ordered that plaintiffs pay costs of both courts.

(Signed) W. G. WILY,
JAMES G. TALIAFERO,
Assistant Justices.

I concur in the conclusions arrived at in the opinion pronounced by Mr. Justice Wyly and reserve the right to place the grounds of my concurrence in a separate opinion.

(Signed) P. H. MORGAN,
Ass't Justice.

Concurring opining of Mr Justice Howell.

The plaintiffs' counsel states the question in this case thus: "Has the State the power to make the grants of authority to the plaintiffs to lay tracks, construct depots, and to occupy the batture for the purposes set forth in the acts of the legislature relative to the corporation?"

I think the legislature may grant such authority as to "public places," but in my opinion a portion of the batture embraced in the grant has been reduced to the ownership of the city of New Orleans, and as to such portion the authority of the State is no greater than to any other property held in private ownership so long as the municipal corporation exists.

I therefore concur in maintaining the injunction in favor of the city only as to the property or squares shown to belong to it, but in other respects I think the judgment of the lower court should be affirmed.

The Chief Justice dissented from this decree, maintaining the validity of the grants. His dissent is in 86th Ann., from p. 524 to 529.

On the rehearing granted in the case the following decree was pronounced:

New Orleans, Mobile and Chattanooga Railroad Company vs. The City of New Orleans, No. 3692.

Appeal from the Eighth District Court for the Parish of Orleans.

Mr. Justice Morgan:

The sole question presented in this case is, has the State the power to grant a railroad company the right of way through a street in this city? A thorough examination of this question has led us to the conclusion it has.

It is therefore ordered, adjudged and decreed that the judgment heretofore rendered by us be avoided, annulled and set aside, and it is now ordered, adjudged and decreed that the judgment of the District Court be affirmed with costs.

This decree thus affirmed in on pp. 383-4 of the printed record. It sustained the validity of the grants.

Dissenting opinion of Mr. Justice Wyly.

The State can grant the right of way to a railroad company, but the company can only get the land necessary for the tracks and depots by expropriation or purchase. I had occasion to express my views on the main question involved in the opinion of this court delivered on 19th May, 1873.

I therefore dissent in this case.

(Signed) W. G. WYLY.

I concur in the dissenting opinion of Mr. Justice Wyly.

(Signed) J. G. TALIAFERO,

Associate Justice.

In the other case between the same parties, on the question of the validity of these grants, the Supreme Court of the State decided (printed record, p. 7 et seq.) against their validity as follows:

No. 3701.

New Orleans, Mobile and Chattanooga Railroad Company

vs.

City of New Orleans et als. Charles Morgan, Intervenor.

WYLY, J. The question presented in this case is the same as that just decided, and for the reasons therein given,

It is ordered that the judgment herein be annulled, and the injunction be dissolved; and it is now ordered that there be judgment for the City of New Orleans, and that the prayer of the latter in injunction be granted; *and it is ordered that the plaintiffs be restrained and inhibited from occupying the property in controversy.* It is further ordered that plaintiffs pay costs of both courts.

Superior District Court, Parish of Orleans.

New Orleans, Mobile and Texas R. R. Co.
versus
City of New Orleans.

Supreme Court of the State of Louisiana.

Clerk's Office, New Orleans, May 4, 1874.

N. O., M. & C. R. R. Co.
versus
City of New Orleans. No. 3701.

Appeal from the Eighth District Court, Parish of Orleans, No. 4.

Mr. Justice Howell delivered the opinion and decree of the Court, in the words and figures following, to wit:

On rehearing:

The plaintiff company enjoined the City of New Orleans from leasing or selling, and from interfering with plaintiffs in occupying and enjoying, holding and acquiring certain lands granted to the plaintiffs by and described in the following clause of section 15 of Act No. 260, 1869, to wit:

"And there is hereby granted to the said company the right to locate, construct, maintain and use a passenger depot, with office and apartments suitable for its legitimate business, upon the part or portion of the levee or streets and grounds in the City of New Orleans bounded by Canal, Delta and Poydras sts., and a line parallel to and one hundred and fifty feet easterly from Delta street; and for the construction of a freight depot, and for other purposes of a legitimate business, to enclose and occupy the blocks of ground, parts of street, and portion of

levee in said city bounded by Girod, Water and Calliope sts., and a line parallel to and two hundred and ninety feet easterly from Water street, provided said company shall not enclose or occupy that part or portion of the blocks of ground within said last named limits, which is the private property of individuals, until said company has acquired the title thereto." The plaintiffs allege that they have acquired by purchase all of the private property within the boundaries of the said grant.

The only answer filed by the city to the original and supplemental petition to plaintiffs in this suit is a general denial. The other answers are to the intervention of Charles Morgan, and this branch of the suit has been disposed of, and is not before us; but the question presented and discussed by both parties is the right of the State to make the said grant, the city claiming to be the owner of said grant, subject only to a servitude in favor of the public as long as it may be needed for public purposes, and the State asserting absolute ownership and control of the land as public places.

If they be "public places," in the ordinary legal signification of these words, it may be that the State has the control as serted. We will here inquire into the rights of the city as to the lands.

In 1820, the batture and that portion of the city was owned or claimed by the heirs and assigns of one Bertrand Gravier as riparian proprietors, and there being some difficulty with the city as to the ownership and use thereof, the parties entered into a compromise by notarial act in September of that year, by which it was stipulated that all lots of ground outside of a certain line should remain inalienable and be used for no other public purposes than those for which they are naturally designated.

When in 1836 the city was divided into municipalities, it was provided that no disposition should ever be made of the said batture in violation of said compromise, and that the Second Municipality, in which it was situated, should not obstruct the inhabitants of any part of the city in the free use thereof.

By the continued accessions this space of ground became inconvenient for public use, and in 1850 the Legislature repealed that portion of the act of 1836 prohibiting any disposition thereof, authorized and directed the Second Municipality to lay off two additional streets according to a certain plan, declared that the balance of the batture should be left open, and so kept for the accommodation of the public and the convenience of commerce, and that in the event of the agreement of the original parties to the said compromise for the sale of the said batture, it should be the duty of the Second Municipality to lay off in lots all not needed for streets and public purposes as above, and dispose thereof on terms to be agreed on; provided one-third of the proceeds should be appropriated to the general sinking fund of the city.

In pursuance of this act the said parties, with the second municipality, which was represented by a committee, agreed by notarial act on 20th June, 1851, to change the destination made in the compromise of September, 1820; that three streets should be laid out, certain squares divided into lots and sold at auction within different periods of time and on specified terms, which sale should be binding on the parties then contracting with the second municipality as vendors; that the proceeds be divided into three parts, one to be paid to the said original parties, one to the general sinking-fund of the city, the other into the treasury of the second municipality; that three specific squares be reserved for market-houses, and that portion not divided into lots for sale should be, in the language of the act, "vested in perpetuity and full ownership in said municipality No. 2," in favor of whom the said parties then contracting therewith ceeded and relinquished forever all the claims in and to the said batture, as well as all and every enlargement thereof, or accretion thereto, by new formation.

It is by this act, it is contended, the city, which has succeeded to the rights of the second municipality, acquired the title to and full ownership of the ground now in controversy.

The title, it would seem, was thereby vested in the city so far as the original owners, parties to the above act, could confer it, and the property is under the exclusive control of the

city as owner, for the benefit of the inhabitants, and subject to the servitude in favor of commerce if needed, unless there is in law some such relation between the municipal corporation and the State as maker, all property acquired by corporation the property of the State and subject to its control.

Is this so?

A municipal corporation is appropriately defined to be "the investing the people of a place with the local government thereof." Salk, 183.

It has no power not conferred upon it expressly or by fair implication by the law of the State creating it. Both the persons and the place inhabited by them are indispensable to the constitution of such a corporation. It is an agency to regulate and administer the internal concerns of a locality in matters peculiar to the place incorporated and not common to the State or people at large; but duties and functions may be and are conferred and imposed not local in their nature; it possesses two classes of power and two classes of rights, public and private.

In all that relates to one class it is merely the agent of the State, and subject to its control; in the other it is the agent of the inhabitants of the place; the corporators maintain the character and relation of individuals, and is not subject to the absolute control of the legislature, its creator. Among this latter class is the right to acquire, hold, and dispose of property, to sue and be sued, etc. It is true that these rights are originally derived from the legislature; but once conferred they are to be exercised while it exists at the will of the corporation, in its own and as to its own interest, for the inhabitants, just as certain rights are conferred on private corporations not sui juris, as minors and married women, but are not afterwards under the control of the legislature.

Dillon on Municipal Corporations, 2d ed., chap. II, §§ 9a to 10a; chap. IV., §§ 34-40 and notes. Cooley's Constitutional Limitations, pp. 235-'6, 238.

In § 39 Mr. Dillon says: It may assist to an understanding of the extent of legislative power over municipal corporations proper (incorporated towns and cities) to observe that these as

ordinarily constituted posses, according to many courts, a double character, the *own* governmental legislation or public; the other in a sense proprietary or private. The distinction between these, though sometimes difficult to trace, is highly important, and is frequently referred to, particularly in the cases relating to the implied or common-law liability or municipal corporations for the negligence of their servants, agents, or officers in the execution of corporate duties and powers.

In its governmental or public character the corporation is made by the State one of its instruments, or the local depository of certain limited and prescribed political powers to be exercised for the public good, on behalf of the State, and not for itself. In this respect it is assimilated, in its nature and functions, to a county corporation, which, as we have seen, is fully part of the governmental machinery of the sovereignty which creates it. Over all its civil, political, or governmental powers, the authority of the legislature is, in the nature of things, supreme and without limitation, unless the limitation is found in some peculiar provision of the constitution of the particular State. But in its proprietary or private character the theory is that the powers are supposed not to be conferred finally or chiefly from considerations connected with the government of the State at large, but for the private advantage of the particular corporation as a distinct legal personality, and as to such powers and to property acquired thereunder and contracts made with reference thereto the corporation is to be regarded as quo ad hoc, a private corporation, or at least not public in the sense that the power of the legislature over it is omnipotent.

Mr. Cooley, at page 238, says:

"The rule upon the subject we take to be this: Where corporate powers are conferred there is an implied compact between the State and the corporation that the property which they are given the capacity to acquire for corporate purposes, under their charter, shall not be taken from them and appropropriated to other uses. If the State grants property to the corporation the grant is an executed contract, which cannot be revoked. The rights acquired, either by such grants or by

another legitimate mode in which such a corporation can acquire property, are vested rights and cannot be taken away."

In 29 Vermont, p. 12, it was said:

"But while the legislative power (to enlarge, restrain, or even destroy municipal corporations, as the public interest may require) may be exercised over public and municipal corporations, it has uniformly been held that town and other public corporations may have private rights and interests vested in them under their charter, and as to those rights they are to be regarded and protected the same as if they were the rights and interests of individuals or private corporations."

In 18 Cal., 490, Mr. Chief Justice Field, as the organ of the Court, takes the ground that the real estate or private property of a municipal corporation is protected by the clause in the National Constitution, the inviolability of contracts; that all legislative authority over it must be exercised in subordination to this guaranty, and that it is subject to legislative control to the same extent, but no greater extent, than all other property in the State.

In 9 Cranch (U. S.) 336 and 52, Mr. Justice Story expresses the opinion that, "in respect to public corporations, which exists only for public purposes, such as counties, towns, cities, etc., the legislature may, under proper limitations, have a right to change, modify, enlarge or restrain them, securing, however, the property for the uses of those of whom and at whose expense it was originally purchased."

This is reiterated by Chancellor Kent, 2 Com. 305, and by Mr. Justice Washington, in Dartmouth College case, 4 Wheat. 518, 663. In this last case Mr. Justice Story, at page 694, says: "But it will hardly be contended that, even in respect to such corporations, the legislative power is so transcendent that it may at its will take away the private property of the corporation, or change the uses of its private funds acquired under the public faith."

In 18 L. 213, it is said: "Urban property fronting on a water course is entitled to alluvian as well as rural estates; and cities many acquire June alluvians, but it must be as

proprietor of the front, or riparian proprietor." (See also 10 A. 54 and 7 A. 505.)

We are aware that very different views have been expressed by very high authority, and that some of the authors and jurists from whom we have quoted have used language susceptible of a different construction, and declared the aversion of municipal powers into public and private unsatisfactory, but after a careful consideration of the opinions on both sides we have come to the conclusion that a municipal corporation may own property to and over which the legislature has, while such corporation exists, no right or control in opposition to or independently of the will or consent of the corporation; and we think this is consonant justice.

There is a principal involved in it. The principal that those who have to pay should have a voice in the disposal of what is paid for; a principal which is a barrier to centralized or organized power; a principal that protects every person in the control of his own private affairs; a principal which the judiciary intended to maintain.

The theory or argument that the legislature has absolute ownership and control of all the property and rights of a municipal corporation because the corporation is represented in the legislature is not conclusive.

Such representation is only in matters properly within legislative action, just as the representation of all other portions and inhabitants of the State.

The private rights of the corporation are as much protected as those of individuals, and it is a fact, manifest to all, that the incorporation of such a city as New Orleans is a necessity. The multiplying and complicated interests of the compact and increasing community are such that the legislature cannot administer them, and some of them are of such a nature as not to be within mere legislative action, but are to be conducted under general rules, thus necessitating the creation of an intellectual body, with something more than governmental functions; but which do not constitute an *imperium in imperio*.

If, then, a municipal corporation can acquire the fee-simple of property, we think the squares intended for the depots of

the plaintiffs were so acquired, and this cannot be taken by the legislature while the city corporation exists.

The legislature expressly recognized and ratified the compromise of September, 1820, in which the parties donating or designating acted as riparian proprietors, and in the act 257 of 1850 the section of the act of 1836 prohibiting the violation of said compromise was repealed, and the municipality No. 2 was authorized to enter into an agreement with the said parties "for the sale of the said batture" on certain conditions, which were complied with. If it be urged that the third section of said act of 1850 required the portion not then laid off into streets to be kept open forever for commerce, the answer is, that Act No. 333 of 1853 authorized the withdrawal therefrom of such as may not be needed for public uses, and this has been done by the city (which cannot sue itself), in the subsequent laying off of other streets, and selling two and a half squares in the block of square (within the State grant) nearest the river, and which had been purchased by the plaintiffs. All this is recognized by the legislature in the act under which plaintiffs now claim, by requiring them to purchase, and by them in making the purchases; while this legislation may be construed as making such recognition, it can be invoked in aid or support of the power to make this grant only on the theory that the city owned the property simply as the agent of the State, a theory which we do not adopt as to this property, because we think the city can own private property, and that the former owners intended to, and did, by the act of 20th June, 1851, transfer the title thereof to the city, subject only to the uses of commerce and of the public while so needed.

And such must have been the opinion of the plaintiffs when they made the offer which they allege to purchase a part of this very ground from the city, about the time this suit was instituted; and their petition seems to be constructive on the hypothesis that the city had such rights to the said property as to make a resort to the laws relative to expropriation necessary.

The act of 1850 may have been necessary to give the municipality No. 2 the authority to enter into an agreement with

the owners, but the power having been exercised, and the conditions complied with, the title of said parties (which was recognized in the said act) vested by the notarial act of June, 1851, as we think, in the municipality which then took the place of the said former owners, with all their rights, including the right to bring into commerce such portions as might become necessary for public use.

It is contended, however, that the case of Parish vs. Municipality, 8 A., 145, fixes the charcter of the ground in question as a locus publicus in the technical sense of the term, and intimates that so much of the act of 1850 as may confer any rights upon the municipality is unconstitutional.

An examination of the case will show that the matter in controversy was the servitude of view and way claimed by plaintiff, and that the case went off on an exception; that plaintiff had no cause of action. The right therein asserted of the legislature to change the distinction of a portion of the batture previously dedicated to the public use is not denied; but this is not inconsistent with the right of the riparian proprietor to sell his property, and his right, or that of his vendee, to withdraw that property from the position of a locus publicus, when not needed as such under existing legislation.

The antecedent cases had reference to the legislation and the rights of parties thereunder prior to the act of 1850 and the transfer of June, 1851, under which the rights of the city have acquired. But in those cases the rights of riparian proprietors to the batture were recognized subject to a public servitude, and the ownership of the city as against said proprietors was denied. Judge Martin, however, in 18 L., 249, contended that the formations in front of the city did not belong to owners of the lots along a certain line, but vested in the city, and he insisted that his views were sustained by the decision of the United States Supreme Court in 10 Peters, 662.

The majority of the Court decided in favor of the riparian proprietors: and we think these parties have conveyed their rights to the portion of the batture now in controversy to the city, for the inhabitants; that those rights are protected by the constitution now just as those of the former owners were,

the city having the capacity to own property for the exclusive use and benefit of the inhabitants, and having acquired all the rights of the former owners, and that the city or inhabitants cannot be compelled to contribute the squares of ground in question to the plaintiff without compensation.

Whether they will or not make such contribution voluntarily, in consideration of the benefit resulting from the establishment of the railroad, is a question not pertinent here; we are to pass only on the legal rights of the parties.

In our opinion, the injunction improperly issued in this case. But *as the city has made no claim against the plaintiffs, our former decree was erroneous in granting a demand in reconvention and inhibiting the plaintiffs from occupying the property in controversy. Under the pleadings all we can do is to render judgment in favor of the city, dissolving the injunction and dismissing plaintiff's suit, leaving the parties to their rights under the laws relative to the expropriation of property.*

It is therefore ordered that our former decree be set aside, and it is now ordered that the judgment appealed from be reversed, and that there be judgment in favor of the defendant, the City of New Orleans, dissolving the injunction herein and dismissing plaintiff's suit, with costs, in both courts, without prejudice to the rights of the parties under the laws of expropriation.

Mr. Justice Wyly concurs in this decree for the reasons given by him in the former opinion of the Court.

A true copy.

[SEAL.] (Signed) M. P. JULIAN,
Deputy Clerk.

This is followed by the dissent of the Chief Justice, the dissent is on p. 486 to p. 491 of the 26th Ann.

Subsequent to these decisions, the suit now here on appeal was brought; the following are the pleadings and judgment in the instant case:

State of Louisiana, Superior District Court for the Parish of Orleans.

New Orleans, Mobile & Texas Railroad Company
versus
City of New Orleans. } No. 26069.

Petition—Filed July 8th, 1874.

To the honorable Jacob Hawkins, Judge of the Superior District Court, for the Parish of Orleans:

The petition of the New Orleans, Mobile and Texas Railroad Company, a corporation created by and under the laws of the State of Alabama, and permitted and authorized by the laws of the State of Louisiana to maintain its railway and exercise its rights within the State of Louisiana, respectfully shows:

That by the laws of Louisiana your petitioner has had conferred upon it the right to construct and maintain a railway within this State, and connecting the cities of New Orleans and Mobile, coming into the City of New Orleans by the way of Elysian Fields street; thence passing up the levee on the front of the city to Calliope street, and to construct in connection therewith, and for the uses thereof, certain freight and passenger depots, wood-yards, water-tanks, and other necessary buildings and appurtenances have been constructed at great cost, and have been maintained and used for the purposes of commerce to the great advantage of the trade of New Orleans.

That the right of your petitioner to maintain said railway tracks and necessary buildings and appurtenances has been recognized by the honorable the Supreme Court of Louisiana, in its opinions and decrees delivered *on the 4th of May*, 1874, in actions wherein the New Orleans, Mobile and Chattanooga Railroad Company was plaintiff and the City of New Orleans a defendant; by which opinions and decrees an injunction which had heretofore been ordered *by said court* against said railroad company was set aside, and the plaintiff allowed *to remain in possession* of Elysian Fields street and the levee below Canal street, and to maintain its railway therein *absolutely*, and to maintain its railway buildings, etc., on the levee and batture between Canal and Calliope street, and remain in peaceable use and enjoyment thereof, *subject to certain rights of*

the City of New Orleans to be judicially ascertained, as by the records of said suits Nos. 3692 and 3701 of said Supreme Court will more fully appear.

Now your petitioner shows that, being in lawful and peaceable possession as aforesaid of its said costly and valuable property, the City of New Orleans, through its officers and agents, on the 9th day of July, 1874, has tortiously, unlawfully, and violently made an attack upon the property of your petitioner in the neighborhood of St. Joseph street, within the space heretofore mentioned, and has begun with a force of about one hundred men to demolish and destroy the fences, buildings, and other property of your petitioner, and is still continuing said unlawful and outrageous acts of violence, and will continue the same to the irreparable injury of petitioner, unless restrained by injunction.

That by said acts of outrage and violence by said defendants petitioner has suffered in damages, counsel fees, loss of business, and injury to property the sum of ten thousand dollars.

Wherefore, in consideration of the premises and the annexed affidavit, petitioner prays that a writ of injunction may issue herein according to law restraining and enjoining the defendant, and each and every one of its officers and employés, *from interfering in any wise with the property of petitioner in the space heretofore described on the* levee and batture between Canal and Calliope streets; from destroying or attempting to destroy any property of petitioner within the limits of New Orleans; from proceeding against petitioner or its property *except by due process in the courts of law*, and that after due proceedings had said injunction be made perpetual, and for citation of said defendant and judgment against it for ten thousand dollars and interest from judicial demand and all costs and general and equitable relief.

(Signed) KENNARD, HOWE & PRENTISS, A. MICOU,
Of Counsel.

Writ of injunction to be served on the City of N. O.

State of Louisiana, Superior District Court for the parish of Orleans.

New Orleans, Mobile and Texas R. R. Co. *versus* City of New Orleans. } No. 26069.

State of Louisiana to the City of New Orleans, through L. A. Wiltz, Mayor, greeting:

You are hereby commanded, enjoined and restrained, in the name of the State of Louisiana and of the Superior District Court of the parish of Orleans, from interfering in any wise with the property of petitioner in the space, to wit, on the levee and batture between Canal and Calliope streets, and in the neighborhood of St. Joseph street; from destroying or attempting to destroy any property of petitioner within the limits of New Orleans, and from proceeding against petitioner or its property, except by due proceedings in the courts of law.

And you are so enjoined until the further order of this honorable court.

Witness the honorable Jacob Hawkins, judge of our said court, at the city of New Orleans, this 8th day of July, in the year of our Lord eighteen hundred and seven-y-four, in ninety-ninth year of the Independence of the United States.

(Signed) J. J. HANNAN,
Dy Clk.

Superior District Court for the Parish of New Orleans.

New Orleans, Mobile & Texas Railroad Company *versus* City of New Orleans. } No. 26069.

And now before the Court comes the City of New Orleans, and for answer to the petition herein filed and served upon her she denies each and every allegation therein contained, except such as may be hereinafter admitted.

And for special answer this appearer further denies the existence of a judgment of the Supreme Court of the State of Louisiana, having the force and effect set forth and alleged in plaintiff's petition; and avers and declares in and by a decre

rendered in a certain suit in said court, and known and designated on the docket thereof as No. 3692, being the same judgment rendered to in plaintiff's petition, the court aforesaid merely recognized and intended to recognize a right of way, on the part of the New Orleans, Mobile and Texas Railroad Co., in and through certain public streets of the City of New Orleans.

Further answering, says that the Supreme Court of Louisiana, in and by a certain judgment therein rendered in the said suit of the New Orleans, Mobile and Chattanooga Railroad Company vs. City of New Orleans, known on the docket of said court as No 3701, recognized and decreed the City of New Orleans to be the legal and equitable, the sole and only owner of all the property real and personal, and all the rights, franchises, privileges, and servitudes claimed and demanded by the said city in the suit aforesaid; the said judgment which was founded on the same cause of action, with the same demand, and between the same parties as is set forth in the petition filed in this case, this appearer now pleads against the plaintiffs herein as res adjudicata.

And this appearer further shows unto your honors that the judgment of the Supreme Court of Louisiana hereinbefore last referred to not only precludes and estops the plaintiff herein from having and maintaining the presentaction, but that under and by virtue of the same the City of New Orleans is legally and equitably entitled to be put in possession and to have absolute and unrestricted control of all the property, real and personal, and all the rights, franchises, privileges, servitudes, and claim of every nature and description referred to in and embraced by the judgment in the aforesaid suit No. 3701.

Further, this appearer says that if any portion of the real estate referred to and in and embraced by the aforesaid decree of the Supreme Court in favor of this appearer, or referred to in or embraced by thepetition herein filed, has been lawfully dedicated to public use, it is the right and duty of this appearer to remove therefrom all impediments and obstacles found in said streets, so as to render the same open and free for use on the part of the public.

Wherefore this appearer prays that upon the original action judgment may be entered in favor of this appearer and against the said plaintiffs; that the injunction herein obtained may be dissolved and held for naught; that this appearer may have and recover in accordance with law fifty thousand dollars for damages by her sustained by reason and on account of the aforesaid writ of injunction, and twenty-five hundred dollars special damages for attorney's fees; and that the said plaintiffs may be furthermore condemned to pay all the costs of this suit.

And reconvening and becoming plaintiff in reconvention, this appearer prays that the New Orleans, Mobile and Texas Railroad Company may be cited to appear and answer this demand in reconvention; that in due course of law the rights, claims, and demand in favor of this appearer, as fixed and decreed by the Supreme Court of Louisiana in the aforesaid suit No. 3701, may not be recognized by this honorable court, but that such order or orders, writ or writs, process or processes, as shall become necessary be directed to issue, not only for the purpose of placing this appearer in the quiet and peaceable, the sole and absolute possession of all the property, rights, credits, claims, demands, privileges, franchises, and servitudes accorded to her by the Supreme Court of Louisiana in manner and form and by the judgment aforesaid, but to maintain and keep this appearer in the quiet, uninterrupted, sole, and absolute possession and enjoyment thereof, free and clear of all hindrance or disturbance on the part of plaintiffs or any party or parties whomsoever.

She further prays that it should appear upon the trial of this case that any part or portion of the landed property claimed by this appearer under the judgment aforesaid has been lawfully dedicated as a public street for the uses and convenience of the public, and that obstructions or obstacles have been placed in such public streets by the plaintiffs herein, or any other person or persons whomsoever, that this appearer may be declared to have the right and authority to remove any and all of such obstructions and impediments, and to open the public streets aforesaid for the public use and convenience, and

that the said plaintiffs may be perpetually enjoined and restrained from interfering, directly or indirectly, and in any manner whatever with the free and full use and enjoyment on the part of the public of such public streets or places.

This appearer further prays that plaintiffs may be condemned to pay such damages as are hereinabove prayed for, together with all the costs of suit; and that this appearer may have such other and further order, judgment, and relief as may be suited to law and the nature of the case.

(Signed) H. H. WALSH,
Ass't City Att'y.

(Signed) GEORGE S. LACEY,
City Attorney

(Signed) WM. W. KING,
Of Counsel.

State of Louisiana, Superior District Court for the parish of Orleans.

FRIDAY, the 2d day June, 1876.

Present, the honorable B. L. Lynch, judge.

N. O., Mobile and Texas R. R. Co. *vs.* City of New Orleans. } No. 26069.

The plaintiff presents to the court a petition and a bond for the removal of this cause to the Circuit Court of the United States, according to the acts of Congress, and asks for the filing of the papers and making of the order prayed for.

Whereupon the court directs the filing of the papers, and that a notice issue to the defendant's attorney, returnable on Tuesday next to show cause, if any, against the order.

A true copy. Extract from the minutes.

(Signed) P. E. BURKE, *D'y Clerk.*

Tuesday, June 6th, 1876.

Present, Hon. B. L. Lynch, judge.

New Orleans, Mobile & Texas R. R. Co. *vs.* City of New Orleans. } No. 26069.

The rule herein taken for the removal of cause to the Circuit Court of the United States came on this day for trial.

Jno. A. Campbell, for plaintiff in rule, defendant being absent and not represented.

When, after hearing the pleadings and counsel, the court considering the law to be in favor of plaintiff in rule—

It is ordered that said rule be made absolute, and accordingly that this cause be removed to the Circuit Court of the United States.

Decree.—Entered and filed June 11th, 1878.

Circuit Court of the United States, Fifth Circuit and District of Louisiana.

New Orleans, Mobile and Texas R. R. Co.
vs.
City of New Orleans. } No. 7912.

This cause came on to be heard on the pleadings, proceedings, and orders in the cause, and was argued by counsel for all of the parties.

The court, after consideration of the premises, declares, and decrees that the judgment rendered by the Eighth District court of the parish of Orleans in the suit No. nineteen in that court, between these same parties, the 19th day of December, 1871, and which judgment was affirmed by the Supreme Court of this State the 4th day of May, 1874, upon appeal made by the defendant in this suit, has the authority of res-adjudicata between them, the subject matter of the two suits being the same, and the object identical; and the wrongs committed by the defendant, as shown by the testimony, affects the property mentioned in the judgment so rendered by the State tribunals.

The court orders and decrees that the injunction granted in this suit by the Superior District Court before its removal to this court be perpetuated, and the defendants be enjoined and restrained from disturbing the plaintiff, their agents, servants, and assigns, in the occupation, use, and employment of their railroad tracks, depots, and other appurtenances, under their charter, which are in and along the streets, squares spaces, specified in the grants of the general assembly to the said corporation, and also in the order and decree of the said Supreme Court in the cause No. 3692 aforesaid, a transcript of which is on file; and that the defendants pay the costs of this suit.

June 11th, 1878.

(Signed) EDWARD C. BILLINGS, *Judge.*

Petition for appeal.—Filed July 17th, 1878.

New Orleans, Mobile and Texas Railroad No. *vs.* City of New Orleans. } No. 7972.

To the Honorable the Circuit Court of the United States for the Fifth Circuit and District of Louisiana:

The petition of the City of New Orleans, the defendant in the above suit respectfully represents that in the said case on the 11th of June, 1878, a final decree was signed against the said defendant in a matter involving more than five thousand dollars, in which there was manifest error which will work irreparable injury to the defendant unless she can be relieved therefrom by an appeal to the Supreme Court of the United States.

Wherefore she prays, upon tendering a good and sufficient bond, as required by law, for security, in the sum of five hundred dollars, that an appeal be allowed in this case to said Supreme Court, and that the same be made returnable according to law, and that the appellees be duly cited to answer the same; and, further, that the original maps and plans filed in the case be taken up in the record of appeal; and for all other relief in the premises.

(Signed) WM. W. KING,
(Signed) B. F. JONAS,
of Counsel.

ORDER.

An appeal is allowed in this case as prayed for, returnable to the Supreme Court of the United States, on the second Monday of October, 1878, upon appellant giving bond, with good and solvent security, in the sum of five hundred dollars, conditioned as the law directs.

June 17th, 1878.

(Signed) EDWARD C. BILLINGS, *Judge.*

Mayoralty of New Orleans, City Hall, October 11, 1882.

No. 8079—Administration Series.

Whereas, propositions have been made for the compromise

and settlement of the suit and the matters involved therein, known as the City of New Orleans vs. The New Orleans, Mobile and Texas Railroad Company, now pending in the Supreme Court of the United States, on an appeal taken by the City of New Orleans from the judgment of the Circuit Court of the United States for the District of Louisiana, rendered on the 11th of June, 1878, affirming and declaring as *res adjudicata* the judgment rendered by the Eighth District Court for the Parish of Orleans, on the 15th day of December, 1871, which judgment was affirmed by the Supreme Court of the State of Louisiana, No. 3692, in favor of said New Orleans, Mobile and Texas Railroad Company and against the City of New Orleans, affirming the constitutionality of the several acts of the Legislature of Louisiana of 1868, 1869 and 1870, relative to said railroad company, and the grants, rights and privileges made to said company. And to grant and confirm the New Orleans, Mobile and Texas Railroad Company as re-organized, and the Louisville and Nashville Railroad Company in the grants, rights, occupancy and privileges heretofore made by the city and granted and confirmed by the State of Louisiana to the New Orleans, Mobile and Chattanooga Railroad Company, and the New Orleans, Mobile and Texas Railroad Company, in and by the several acts of the Legislature, No. 28 of 1868, Nos. 26 and 67 of 1869, and No. 31 of 1870.

Be it resolved, That the Mayor of the City of New Orleans, is hereby authorized and directed to accept the proposition made and to compromise and settle with the New Orleans, Mobile and Texas Railroad Company, as reorganized, and the Louisville and Nashville Railroad Company recognized as successors, and entitled to the rights, grants and privileges heretofore made to the New Orleans, Mobile and Chattanooga Railroad Company and the New Orleans, Mobile and Texas Railroad Company and the matters in controversy and the suit of the City of New Orleans vs. the New Orleans, Mobile and Texas Railroad Company, dismissing said appeal, acquiescing in the judgments rendered in favor of said Railroad Company, and confirming to the New Orleans, Mobile and Texas Railroad Company the rights, grants and privileges heretofore

granted by the City of New Orleans and by the State of Louisiana, as set forth in the preamble heretofore and in consideration of forty thousand dollars, and the Mayor is authorized to receive the same and to sign any and all agreements and contracts necessary or proper to carry out this ordinance and the compromise and settlement above mentioned and to have the appeal taken herein by the City of New Orleans dismissed, and acquiesce in the judgments rendered in favor of the Railroad Company as a final settlement of the same.

Adopted by the Council of the City of New Orleans, October 11th, 1882.

Yeas — Delamore, Fagan, Fitzpatrick, Huger, Mealey, Walshe.

Absent—Guillotte.

JOS. A. SHAKESPEARE, Mayor.

A true copy:

M. McNAMARA, Secretary.

State of Louisiana, Parish of Orleans,
City of New Orleans,

Be it known, that on this eleventh day of October, in the year of our Lord one thousand eight hundred and eighty-two, before me, Samuel Flower, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified and in the presence of the witnesses hereinafter named and undersigned,

Personally came and appeared the Honorable Joseph A. Shakspeare, mayor of the City of New Orleans, herein acting in such capacity under and by virtue of the authority in him vested by ordinance No. 8079, administration series, adopted by the Council of the city of New Orleans, at a meeting held on this eleventh day of October, A. D. 1882, a duly certified copy of which is annexed to this act and incorporated as part hereof.

Who declared that he acknowledges to have received from Thos. L. Bayne, Esq., attorney for the Louisville and Nashville Railroad Company, and for it and the New Orleans, Mobile and Texas Railroad Company, re-organized, the sum of forty thousand dollars; and for and in consideration of said sum,

the City of New Orleans does, by these presents, compromise and settle all the matters in controversy and the suit of the City of New Orleans versus The New Orleans, Mobile and Texas Railroad Company, now pending in the Supreme Court of the United States, on appeal by the City of New Orleans from the judgment of the Circuit Court of the United States, rendered on the eleventh day of June, 1878, affirming the judgments of the Supreme Court of Louisiana and of the Eighth District Court of the Parish of Orleans in favor of said railroad company, dismissing the appeal, acquiescing in the judgments rendered in favor of said company, and confirming and securing to the New Orleans, Mobile and Texas Railroad Company, re-organized, and the Louisville and Nashville Railroad Company, the rights, grants, occupancy and privileges heretofore granted by the City of New Orleans, and grants made and confirmation of the same by the State of Louisiana by acts of the Legislature, No. 28 of 1868, Nos. 26 and 67 of 1869, and No. 31 of 1870, all as set forth in the propositions recited in the preamble to the above mentioned and annexed ordinance No. 8079 A. S., and in said ordinance hereby making full compromise and settlement and granting and confirming all the rights and privileges therein described.

And also personally came and appeared herein, the said Thomas L. Bayne, attorney of and for said railroad company, and in the name and on behalf of said companies, accepts the same.

Thus done and passed at the City of New Orleans, in the presence of E. L. Bower and A. E. McConnell, competent witnesses residing in said city, who hereunto subscribe their names, together with the said appearers, and me, notary, the day, month and year first above written.

Original signed:

JOS. A. SHAKSPEARE, Mayor.

E. L. BOWER.
A. E. MCCONNELL.

SAM'L FLOWER, Notary Public.

I certify the foregoing to be a true and correct copy of the original on file and of record in my notarial archives.

New Orleans, November 6th, 1882.

SAM'L FLOWER, Notary Public.

Testimony from record (Rec., p. 222), to show value of this batture property, by price paid by the Railroad Company for portions of it, before they obtained the legislative grants.

Testimony of Wm. S. Williams.

WM. S. WILLIAMS, sworn for plaintiff, says:

Question. Are you are not connected with the Chattanooga Railroad?

Answer. I am.

Question. In what capacity?

Answer. As treasurer.

(Witness shown map marked X.)

Question. Were you aware of the time the city ordinance was passed, selling to Morgan a portion of the batture in front of New Orleans?

Answer. Yes, sir; last July you have reference to, I believe.

Question. Yes; do you recognize it on the map?

Answer. That is as I should point it out. This diagram, I should think, was correct.

Question. At the time that ordinance was in agitation, did your Company make an offer to the city of any price for that property? If so, state it.

Answer. As soon as we knew the price at which they proposed to sell that property, we offered twice the amount for it

Question. Do you now recollect the figures?

Answer. One hundred and eight thousand dollars we offered for it.

Question. Notwithstanding your offer the sale was made to Mr. Morgan, was it, or was the ordinance passed?

Answer. The ordinance passed.

Cross-examined:

Question. Has your company bought any squares upon that neighborhood?

Answer. Yes, sir.

Question. Which ones?

Answer. I could point it out on the map.

Question. State between what streets?

Answer. We have bought property between Water and Calliope, St. Joseph and the river, as one purchase.

Question. What price did you pay for it?

Answer. I think we paid seventy thousand dollars for it.

Question. What other one?

Answer. We bought between St. Joseph and Julia, Pilie and Water.

Question. At what price?

Answer. I don't remember the price of that. It was at a city sale some two years ago, I think, or three years.

Question. What other one?

Answer. We bought, I think, one-half of the one lying in front of the one just mentioned.

Question. How much for that?

Answer. I don't remember; I should have to refer to the records for that.

Question. What others?

Answer. We have since bought between Julia and Notre Dame, Water and Pilie.

Question. What price did you pay for that?

Answer. We either gave $35,000 with $5,000 added, or it was $30,000 with $5,000 added; it was about $35,000.

Question. That is the square next to the one you refer to as having been offered to be sold to Mr. Morgan?

Answer. Yes, sir.

Question. At the time your company offered one hundred and eight thousand dollars *for the square to which we have referred*, had not the ordinance already passed both boards, and was not the offer made to the mayor in order to defeat Mr. Morgan?

Answer. It was not made to defeat Mr. Morgan. It was made as soon as we knew the price.

Question. Was it made after it had passed both boards?

Answer. I can't say whether one or both; as soon as the price came to our notice of fifty-four thousand dollars we immediately sent a proposition offering one hundred and eight thousand dollars.

Question. It had passed one board?

Answer. I can't say the price had been brought to our

notice either by the passage through one board, or by some outsiders.

Question. Was not the offer made to the mayor of the city?

Answer. It was a written, authentic offer. I don't know to whom it was sent; the president was here at the time; I think I joined him as two officers of the company.

Question. Was it after it passed the council?

Answer. Possibly it was, but it was as soon as it was brought to our notice, and we learned the price.

Re-direct examination:

Question. When you made that offer did you or not understand at that time that Morgan's purchase was complete?

Answer. No sir.

Question. Would you have made any offer if you had known he had closed his bargain?

Answer. No, sir, it would have been useless; we didn't suppose it was complete; we knew the fence had not been made; had no reason to suppose that the fence had been made.

TESTIMONY—FILED JANUARY 25, 1871.

Eighth District Court.

N. O., M. & Chat. R. R. Co. *versus* City of New Orleans, et als. } No. 19. Testimony, Jan. 25, 1871.

Testimony of W. H. Bell.

W. H. BELL sworn for the City of New Orleans:

Question. You are City Surveyor?

Answer. Yes.

Question. Please look at the tracing marked A H, and say whether or not that tracing was made at your office—the City Surveyor's office.

Answer. It was.

Question. From what original map was that made?

Answer. From the original map filed with the Mayor of the City of New Orleans by the company; the dates of which filing is on the original map.

Question. By what company was it filed?

Answer. By the New Orleans, Mobile and Chattanooga Railroad Company.

Question. These figures on the map, at the heads of different streets, what do they indicate—no not the inside figures indicate the distance from the line of the houses to the track?

Answer. Yes; to the centre line of the track.

Question. I see arrow-marks at each end of different lines; do not the figures between the arrow-marks indicate the distances from one arrow-mark to the other, throughout the map?

Answer. Yes, sir.

Question. The object, then, of these arrow-marks, or angles, is to show where a line begins and where it ends?

Answer. To limit the distances.

Question. And the figures on the map indicate the distances between these arrow-marks?

Answer. Yes.

Question. Look at this other map, marked A I, and state whether or not that tracing was made in the City Surveyor's office; and, if so, from what it was made.

Answer. This was made from an original map in the Surveyor's office, and that original map was prepared there in the Surveyor's office.

Question. By whom was that original map made?

Answer. In the Surveyor's office, under my directions.

Question. What do the blue lines running through Elysian Fields and Claiborne streets indicate?

Answer. The lines of the railroad.

Question. What railroad?

Answer. The Pontchartrain and the Chattanooga Railroads, through Elysian Fields.

Question. The blue line in the centre indicates what?

Answer. In the centre of Claiborne street it is the Chattanooga Railroad.

Question. And in the centre of Elysian Fields, does it not indicate the Chattanooga Railroad?

Answer. Yes.

Question. I see along Elysian Fields street, opposite the cros-ss reets, certain figures; what do these figures indicate?

Answer. The distance of the track from the property line.

Question. Please look at the map marked A G; that map shows certain buildings erected, fences made, brick piers in course of construction, etc. Was a survey made of that portion of the levee for the purpose of ascertaining whether or not those buildings, fences, etc., were erected, and whether the fences were or not on the batture?

Answer. Yes.

Question. And the facts in relation to the buildings, fences and improvements, etc., stated on the map are correct?

Answer. Yes.

Question. They are correct as these buildings, fences, etc., stood?

Answer. Yes, as they stood at the day of the survey.

Question. There is a difference now relative to the width of the batture—say from St. Joseph street three or four squares?

Answer. The increased width of the batture commences from Girod street to Canal street—that is, the increased width of the solid batture.

Question. Does this plat, marked B C, show the present condition of the batture?

Answer. This is the one you received yesterday.

Question. This, then, represents the present condition of the road?

Answer. Yes, from the bulkheads to the wharf, as they are at present.

Question. And the figures on the map show the correct distances?

Answer. Yes.

Question. And as they were at the time the measurement was made?

Answer. Yes, and that was only three days ago.

(The city offers in evidence this map, marked B C, now filed.)

Question. The memorandum or statements on the map marked A G are correct, are they, below the river line?

Answer. Yes.

Question. I see on certain squares of ground located on

the map marked A G you have placed certain figures—34,000, 38,000, 38,700, 38,500, 50,700—what do these figures indicate?

Answer. I was requested to make a valuation and place it on the map.

Question. They indicate, then, the valuations which you put on at the request of some city official?

Answer. Yes.

Question. Were you not told by me to ascertain the value of the property, and indicate it on this map.

Answer. If I remember right, the insructions came from your department (city attorney's).

Question. Are you pretty familiar with the value of property on the batture?

Answer. The basis on which I made this valuation was the price that the Pontchartrain Railroad Company paid—$130,000—for the two squares located at the head of Lafayette street, from Girod to Poydras. I took the area of these two squares, and then took the area of those claimed by the Chattanooga Railroad Company, and made the same pro rata valuation.

Question. And this method of determining the valuation gave you the figures which you placed on the respective squares?

Answer. Yes. Taken in the aggregate, it would be more, but one square between Notre Dame and Girod is not filled up, therefore I made a corresponding reduction in its value. The property between Canal and Poydras, and between Delta and Water streets, would be much more valuable than the Pontchartrain Railroad property, and lying between Delta, Water, Girod and Poydras; but I have fixed the same valuation of both.

Question. As far as your knowledge extends, do you consider that a just and reasonable estimate of property in that vicinity?

Answer. Yes; I think the city could realize that in cash to-morrow for this property.

Q. Do you know the route of the Chattanooga Railroad on the levee?

Answer. Yes, sir.

Question. Does or not the route of the Chattanooga Railroad lie between the Pontchartrain Railroad track and the river?

Answer. The Chattanooga Railroad lies between the Pontchartain Railroad and the river.

Question. Do you know or not whether the Pontchartrain Railroad runs close to the property all throughout?

Answer. It runs nearer the property front than the Chattanooga route; it is what we term the inside track, at the office.

Cross-examined:

Question. When did the Pontchartrain Railroad Company buy those squares that you speak of?

Answer. The comptroller's report shows that it was purchased February 8, 1868.

Question. Do you know whether they were paid for, and in what currency?

Answer. I cannot say, positively.

Question. Were they not paid for in city notes?

Answer. I cannot answer that question; I do not know.

Question. Has property appreciated or depreciated since 1868 all over the City of New Orleans?

Answer. That depends a good deal on who wants to buy and who wants to sell.

Question. Is there not a general depreciation of from twenty to twenty-five or thirty per cent. in the value of property since 1868?

Answer. I can hardly admit that. It would not be speaking very well for these two railroad companies on the levee.

Question. I do not ask for any argument; I ask about your knowledge.

Answer. I am not prepared to answer questions outside of my profession.

Question. Have you not been city assessor, or employed in the assessment of various properties?

Answer. Frequently I have been called on to make valuations.

Question. Called on by whom?

Answer. Different officers of the city.

Question. Is that a part of the surveyor's duties.

Answer. The surveyor has to furnish all information to all departments of the city government to the best of his ability.

Question. That is, in his line?

Answer. Yes.

Question. You say that the original of the map A 1 was made at the city surveyor's office; was that made from any survey made by the city surveyor?

Answer. That plan was made from maps in the office. We have maps of all the squares in the city; and the location of the Chattanooga Railroad was measured at different points, as indicated on the map. The distances on Claiborne street are not given, because it was supposed to be in the centre of the street, which is 190 feet 10 inches wide.

STATE OF LOUISIANA,
PARISH OF ORLEANS.

Nicholas J. Hoey, being duly sworn, deposes and says that he is a duly licensed auctioneer in and for the city of New Orleans; that he has been extensively engaged in the sale, purchase and valuation of real estate in the city of New Orleans for the past twenty-five years; that he is familiar with the batture property, between Canal street and Calliope streets, and familiar with its value. Affiant has bought and sold property in that vicinity and on that batture.

The space of that batture, between Canal, Poydras and Delta streets, and a line one hundred and fifty feet easterly from Delta street, as it is defined in the legislative grants to the New Orleans, Mobile & Chattanooga Railroad Company, is worth, in witness' opinion, fully one hundred and ninety-six thousand dollars, ($196,000.)

The space of that batture, between the limits of Water street and a line two hundred and ninety feet easterly from that street and between Poydras and Calliope streets, is, in witness' opinion, worth fully eleven hundred and fifty-one thousand dollars, ($1,151,000.)

Affiant's estimate of the value of the squares between the limits designated, is as follows:

For the squares between Canal and Poydras streets, one hundred and ninety-six thousand dollars, $196,000.

For the squares between Poydras and Lafayette streets, two hundred and seventy thousand dollars, $270,000.

For the squares between Lafayette and Girod streets, two hundred and twenty-five thousand dollars, $225,000.

For the squares between Girod and Notre Dame streets, one hundred and ten thousand dollars, $110,000.

For the squares between Notre Dame and Julia streets, one hundred and seventeen thousand dollars, $117,000.

For the squares between Julia and St. Joseph streets, two hundred and seventy-three thousand dollars, $273,000.

For the squares between St. Joseph and Calliope streets, one hundred and fifty-six thousand dollars, $156,000.

Making the total sum of one million three hundred and forty-seven thousand dollars, $1,347,000.

Witness' estimate supposes that the squares between Canal and Poydras streets extend one hundred and fifty feet easterly from Delta street, with Gravier street dividing, and that the squares from Poydras to Calliope streets extend two hundred and ninety feet easterly from Water street, divided by streets running through them.

New Orleans, 9th *November*, 1882.

NICH'S J. HOEY.

Sworn to and subscribed before me, a notary public, in and for the State of Louisiana, Parish of Orleans, duly commissioned and qualified.

Witness my hand and original seal at New Orleans, La., this 10th day of November, A. D. 1882.

[SEAL.] SAMUEL FLOWER,
Notary Public.

John W. Black, sworn, deposes, I have been a resident of New Orleans engaged in commercial business for over twenty years. I know the batture front, at what is called the levee, between Canal street and Calliope street between Water street and the river. In my experience squares of ground have been sold in that portion of the batture. The strip of that batture or levee extending from Canal street to Calliope street, having a width, from Canal street to Poydras street, of one hundred and fifty feet easterly from Delta street, and having a width of two hundred and ninety feet from Water street easterly, as laid down on the map certified by W. H. Bell, city surveyor, of date January 1, 1871, is, in my judgment, of very great value; single squares within that strip designated, from Canal to Calliope streets, are worth each fully fifty thousand dollars each, some are worth more; the entire strip from Canal to Calliope streets is

worth and could be sold for several hundred thousand dollars, largely over five hundred thousand dollars.

I have never myself bought lots or squares on that batture, but I am very familiar with the value of the property from actual knowledge of the locality, of the prices paid for squares on it, and of value of property in the vicinity as well as on the batture itself.

JOHN W. BLACK.

Sworn to and subscribed before me, at the City of New Orleans, this 10th day of November, 1882.

[SEAL.] SAM'L FLOWER,
Notary Public.

Personally appeared T. Wolfe, Jr., who being duly sworn, deposes and says that he is the secretary of the Board of Liquidation; that the copies annexed are true copies of the resolution passed by said board at its sessions of October 13th and October 17th, 1882; that the ordinances hereto annexed and marked C and D are true copies of the ordinances as passed by the city council at the dates stated in said ordinances.

Sect. 63 634 47

T. WOLFE, Jr.,
Secretary Board of Liquidation City Debt.

Sworn to and subscribed before me at the city of New Orleans, this 10th day of November, 1882.

[SEAL.] SAMUEL FLOWER,
Notary Public.

CITY ORDINANCES—OFFICIAL.

C.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *June* 16, 1880.

[No. 6532—Administration Series.]

AN ORDINANCE to carry into effect act No. 133 of the General Assembly, approved April 10, 1880.

Whereas the Board of Liquidation of the City Debt, created by said act of the General Assembly, approved

April 10, 1880, have been duly organized, and are prepared to undertake the trust given them; therefore

SECTION 1. Be it ordained by the Mayor and Administrators of the city of New Orleans, in council convened, That the Commissioners of the Consolidated Debt of the city of New Orleans be, and are hereby, directed to turn over and transfer to the Board of Liquidation, created by said act No. 133, all books, papers, accounts, deposits, bonds, credits, and all property under their control or in their possession, pursuant to the provisions of said act; and said commissioners shall require of the said Board of Liquidation a detailed receipt of all things so turned over and transferred.

SEC. 2. Be it further ordained, That the Administrator of Finance be, and is hereby, authorized and directed to deposit to the credit of the said Board of Liquidation of the City Debt, and in such bank as shall be selected by them, all taxes appropriated and collected for the interest of the bonded debt of the city of New Orleans; *provided*, that the said Board of Liquidation shall carry out the engagements now existing between the Louisiana National Bank, the Commissioners of the Consolidated Debt and the city of New Orleans.

SEC 3. Be it further ordained, That all ordinances and parts of ordinances in conflict or inconsistent with the provisions of this ordinance be, and the same are hereby, repealed.

Adopted by the Council of the city of New Orleans, June 16, 1880.

Yeas—Chevalley, Collins, Glynn, Isaacson.

I. W. PATTON,
Mayor.

A true copy:

ROBT. C. WOOD,
Secretary.

NEW ORLEANS, *November 9th*, 1882.

Extract from the minutes of Board of Liquidation of a meeting held October 13th, 1882:

"Mr. Gomila moved that the $40,000 now in the hands of the administrator of finance be enjoined, and that the attorney be directed to institute legal proceedings at once."

Adopted.

A true copy.

T. WOLFE, Jr.,
Secretary.

NEW ORLEANS, *November 9th*, 1882.

Extract from the minutes of Board of Liquidation of a meeting held October 17th, 1882:

"Mr. Phelps moved that the resolution heretofore adopted by the Board be so far modified as to authorize the attorney of the Board to take such steps as in his judgment are requisite to set aside the recent agreement of compromise between the city and the N. O. M. and C. R. R. Co. to maintain and reinstate the appeal proposed to be dismissed by such agreement, with power to associate with him counsel in Washington to appear in the Supreme Court to oppose the dismissal of the appeal, and to hold the fund decreed from said compromise, so as to restore it if the compromise is annulled, or to claim it for the Board if said compromise becomes a finality."

Carried.

A true copy.

T. WOLFE, Jr.,
Secretary.

Edward A. Palfrey, being duly sworn, deposes and says that he was the acting president of the board of liquidation on the 13th and 17th of October, 1882; that the meeting of the 13th of October was called owing to an announcement in the daily papers that the city council had compro-

April 10, 1880, have been duly organized, and are prepared to undertake the trust given them; therefore

SECTION 1. Be it ordained by the Mayor and Administrators of the city of New Orleans, in council convened, That the Commissioners of the Consolidated Debt of the city of New Orleans be, and are hereby, directed to turn over and transfer to the Board of Liquidation, created by said act No. 133, all books, papers, accounts, deposits, bonds, credits, and all property under their control or in their possession, pursuant to the provisions of said act; and said commissioners shall require of the said Board of Liquidation a detailed receipt of all things so turned over and transferred.

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Carried.

A true copy.

T. WOLFE, Jr.,
Secretary.

Edward A. Palfrey, being duly sworn, deposes and says that he was the acting president of the board of liquidation on the 13th and 17th of October, 1882; that the meeting of the 13th of October was called owing to an announcement in the daily papers that the city council had compro-

mised with the New Orleans, Mobile, and Texas Railroad Company a law suit involving land of the city of New Orleans, of very great value, for $40,000, paid by the railroad company; the papers also announced that the city council proposed to appropriate the $40,000 to pay some deficit in their current expenses. This newspaper announcement was the first intimation the board had of the transaction. The board regarded the transaction as illegal in the highest degree, and as a sacrifice of the public interests. The board met and urged upon the city officers, members of the board, to recede from the transaction, because they had no right to dispose of the property which the law had transferred to the board; it was further urged at the board that even if the transaction was legal, the city had no right to the proceeds. The city officials answered that they would stand by the transaction notwithstanding the protest of the board. That meeting ended with the determination by the board to at least stop the appropriation by the city officials of the $40,000 as proposed by them, and the attorney was directed to notify the city council that the board would assert its right to the fund, and that they would be held liable if that money was paid out.

This had the effect of stopping the money, and it is still held by the city. Later, on the 17th Oct., the Board met again and resolved to take all necessary steps to prevent the compromise from being carried into effect, as appears by the resolution adopted at the meeting. Two of the city officials who are members of the Board, as well as of the City Council which passed the compromise, declared that they would have voted for the resolution if they had been present at the Board when it passed.

ED. A. PALFREY,
Acting President, Board of Liquidation City Debt.

Sworn to and subscribed before me, at New Orleans, La., this 10th day of November, 1882.

SAMUEL FLOWER, *Notary Public.*

Joseph H. Oglesby, being duly sworn, declares that he has been, since its organization, and is now, the President of the Board of Liquidation of the city debt.

That the Board of Liquidation of the city debt, as orgaganized under act No. 133 of 1880, has had at all times since the passage of said act, and now has, entire control of all matters connected with the bonded debt, and has been, and is now, in the full discharge of all its functions under said act; since the date of the passage of the act the city has, at all times, acknowledged the functions of the Board as defined in the act, as well as under the act of 1882, number ; all taxes levied to pay the bonded debt have been controlled, held, and disbursed by the Board, nor has there ever been any dispute by the city authorities in reference to the right of the Board to all property of the City of New Orleans not dedicated to public use, until the case of the railroad compromise in which the city authorities claimed the right to act without reference to the Board, and in spite of its objection and protest.

The board, since its organization, has derived from property of the city of New Orleans, not dedicated to public use, a very large amount, which it has applied to pay and retire the bonded debt, and its rights and control over the subject confided to its charge by the act of 1880 has always been recognized by the city authorities, save and except their action in the recent compromise with the N. O. Mobile and Texas Railroad Company.

The board is now daily issuing bonds, under the act No. 58 of 1882, in exchange for the bonded obligations of the city, as directed by said act, the board being charged by the act with the liquidation of the entire bonded debt and of the application of all property and assets pledged by the act for the debt.

J. H. Oglesby.

Sworn to and subscribed before the undersigned, a duly commissioned and qualified notary public in and for the

Parish of Orleans, State of Louisiana, at New Orleans, this November 19, 1882, as witness my hand and seal.

[SEAL.] ANDREW HERT, Jr.,
Notary Public.

Blagney T. Walshe, being duly sworn, deposes and says that he is the administrator of finance of the city of New Orleans; that he received the forty thousand dollars paid by the New Orleans, Mobile and Texas Railroad Company, under the recent compromise between the company and the city of New Orleans for the settlement of the law suit involving the grants by the legislature of the lands on the levee to the company. Affiant further deposes that not a dollar of that money has been paid out, but it has been kept, and still is kept, in his hands to abide the result of the legal proceedings taken by the board of liquidation to set aside the compromise. Affiant first received a notification from the attorney of the board not to pay out the money, that the board claimed it; subsequently it was determined at a meeting of the board to adopt legal means to cancel the compromise, and witness then determined to hold the money, to abide the result of these measures, and he has since held it accordingly; so that the money can be returned to the company if the compromise is set aside.

[SEAL.] B. T. WALSHE,
Administrator of Finance.

Approved:
C. F. BUCK, *City Attorney.*

STATE OF LOUISIANA,
Parish of Orleans.

Sworn to and subscribed before me, Samuel Flower, a notary public in and for this parish and State, duly commissioned and qualified as witness my hand and official seal at the city of New Orleans this 9th day of November, 1882.

[SEAL.] SAMUEL FLOWER,
Notary Public.

Supreme Court of the United States.

THE CITY OF NEW ORLEANS, APPELLANT,

vs.

THE NEW ORLEANS, MOBILE AND TEXAS R. R.,
APPELLEE.

Acts of the Legislature of Louisiana, 1882.—*Printed by direction of the Chief Justice.*

Parish of Orleans, State of Louisiana, at New Orleans, this November 19, 1882, as witness my hand and seal.

[SEAL.] ANDREW HERT, Jr.,
Notary Public.

Blagney T. Walshe, being duly sworn, deposes and says that he is the administrator of finance of the city of New Orleans; that he received the forty thousand dollars paid by the New Orleans, Mobile and Texas Railroad Company, under the recent compromise between the company and the city of New Orleans for the settlement of the law suit involving the grants by the legislature of the lands on the levee to the company. Affiant further deposes that not a dollar of that money has been paid out, but it has been kept, and still is kept, in his hands to abide the result of the legal proceedings taken by the board of liquidation to set aside the compromise. Affiant first received a notification from the attorney of the board not to pay out the money, that the board claimed it; subsequently it was determined at a meeting of the board to adopt legal means to cancel the compromise, and witness then determined to hold the money, to abide the result of these measures, and he has since held it accordingly; so that the money can be returned to the company if the compromise is set aside.

[SEAL.] B. T. WALSHE,
Administrator of Finance.

Approved:
C. F. BUCK, *City Attorney.*

STATE OF LOUISIANA,
Parish of Orleans.

Sworn to and subscribed before me, Samuel Flower, a notary public in and for this parish and State, duly commissioned and qualified as witness my hand and official seal at the city of New Orleans this 9th day of November, 1882.

[SEAL.] SAMUEL FLOWER,
Notary Public.

Supreme Court of the United States.

THE CITY OF NEW ORLEANS, APPELLANT,

vs.

THE NEW ORLEANS, MOBILE AND TEXAS R. R., APPELLEE.

Acts of the Legislature of Louisiana, 1882.—*Printed by direction of the Chief Justice.*

Supreme Court of the United States.

THE CITY OF NEW ORLEANS, APPELLANT,

vs.

THE NEW ORLEANS, MOBILE AND TEXAS R. R., APPELLEE.

Acts of the Legislature of Louisiana, 1882.—*Printed by direction of the Chief Justice.*

No. 58.] AN ACT

Entitled an act to authorize the city of New Orleans to renew and extend payment of her outstanding bonds, other than Premium Bonds, to provide the rate of interest on the bonds as renewed or extended, and authorize the levy of a tax to pay the same.

Whereas, under article 48 of the Constitution, notice of intention to apply for the passage of this act has been duly published in the city of New Orleans, for thirty days, as required, and

Whereas, the present financial embarrassment of the city of New Orleans threatens further to depreciate the value of property, to increase the sum of its indebtedness and to impair good government of its affairs, and whereas, litigation has hitherto resulted disastrously for the taxpayer, and whereas, the public creditors of said city of New Orleans have indicated a desire to settle their claims equitably and to postpone the payment of certain bonds in order to lighten the burden of taxation, and whereas, the Constitution con-

templates a definite termination of the corporation's embarrassment by special legislative enactment:

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That the city of New Orleans, acting through the Board of Liquidation of the city debt, or other duly authorized officers, be, and she is hereby, authorized and empowered to extend the bonded indebtedness of said city, other than Premium Bonds, outstanding at the passage and promulgation of this act, for the period of forty years, from January 1, 1883, at a rate of interest not exceeding six per cent.: *provided*, the city shall have the right to call in said bonds, so renewed or extended for payment at par after the year 1895, upon giving notice to that effect during a period of three months.

SECTION 2. *Be it further enacted, etc.*, That the provisions of the foregoing section be, and they are hereby, extended to all bonded obligations of the city, except Premium Bonds, whether due or to become due, including such as may have been merged into judgments, but for which no tax, special or otherwise, has yet been levied; *provided*, nothing in this act shall be considered as a waiver of prescription which may have accrued or may accrue on such bonds in favor of the city.

SEC. 3. *Be it further enacted, etc.*, That to each bond extended or renewed, a certificate or annex, signed by the Mayor and the Administrator of Finance, or Treasurer of said city, shall be securely affixed, which certificate, in express terms, shall import an obligation on the part of the city to pay the principal of said extended bond in forty years from a date not later than the first of July, 1883, with interest as aforesaid; and said certificate shall fully and accurately describe the bond to which it is affixed, and the coupons of interest thereon not yet matured, and shall be of no effect unless accompanied by said bond, which shall be stamped to correspond with the number and description of the certificate, and an accurate registry shall be kept

recording both bond and certificate; and if the bonds to be renewed have been merged in judgment, a certificate of full satisfaction and renunciation of all rights under the judgment shall be attached, and the judgment cancelled and annulled in the records of the court, and on the books of the Department of Accounts or Comptroller, if it has been registered under Act 5 of 1870. Coupons of interest payable at the rate of three per cent. semi-annually, shall be attached to and delivered with said certificate, and shall relate to the dates of maturity of the coupons on the extended bonds, beginning with the earliest coupon maturing after January 1, 1883, and continuing during the period of forty years: *Provided*, That no bonds shall be extended unless all the unmatured coupons falling due after January 1, 1883, are attached thereto: *And provided further*, That the coupons of the extended bond shall be surrendered, with the corresponding coupons of the certificate, when the latter coupons are paid. The said certificates shall be numbered in the order of the applications therefor, and when called in for payment under the operation of the city's option, the last and highest numbers outstanding shall be called first, and interest thereon shall cease at the maturity of the said call. The said extension, during its continuance, shall interrupt all prescription of every kind on said bonds or coupons, and shall not operate any novation thereof, nor shall it be deemed in any manner as altering, weakening, or impairing the original contract obligations aforesaid, or the rights and remedies of the holders thereof, under pre-existing laws or constitutions, so that in case of default or non-payment at any time after due demand of the interest stipulated and agreed upon, or of failure to pay the principal thereof when due, then in that case the extension of time granted for the payment of the principal of said bonds and interest shall, *ipso facto*, be null and void and of no effect, and the holder or holders of said bonds shall be restored to all his or their original rights and remedies, and

be entitled to claim and enforce payment of interest at the time and rates originally stipulated, and payment of the principal at maturity, in accordance with and under the laws by which said bonds were originally issued and in force at the time of their creation as if no such extension had ever been stipulated or agreed upon, as herein provided.

SEC. 4. *Be it further enacted, etc.*, That in order to provide for the payment of matured coupons of outstanding bonds, up to and including January 1, 1883, for which no tax has been levied, the city of New Orleans, acting through the said Board of Liquidation of the city debt, be and is hereby empowered and instructed to deliver to the holder of any valid coupons issued by the said city of New Orleans, matured or to fall due prior to January 2, 1883, and for which no judgment tax shall have been levied, a certificate importing an obligation to pay the sum of the face of said coupons and the interest thereon, at the rate of six per cent. per annum, from maturity thereof until January 1, 1883. Said certificate shall be dated January 1, 1883, and be payable in ten years from date or sooner, at the option of the said city; it shall accurately describe the coupon or coupons in exchange for which it is to be delivered, and said coupons shall first be deposited for safe keeping with the said Board of Liquidation, and an accurate registry shall be made by said board of both the coupons and the corresponding certificates. The said registry shall carefully note the date and number of each deposit of coupons, as aforesaid, in the order of deposit, and the corresponding certificate shall be numbered successively in the same order and without regard to the time of actual issue. The option of redemption reserved to the city, shall begin on January 1, 1884, the last and highest numbers of the certificate being first redeemed, and all to be redeemed successively in the same order. One month's public notice shall be given by said city of the amount and numbers of the certificates it will cause to be redeemed. The said certificates shall bear interest at the

rate of three per cent. semi-annually until paid, to be represented by coupons attached to and numbered identically with said certificates; provided, that said interest shall cease upon any certificate one month after notice as aforesaid shall have been published that the certificate will be paid. Said certificate shall be negotiable and transferable by delivery only without endorsement, and shall invest the holder thereof, with all the rights, remedies, and privileges of the original holders of the coupons in exchange for which they were issued; and in case of non-payment of either the interest or principal of said certificates punctually when due, the holder may immediately, without further process of law, recover from the city the coupons originally deposited as aforesaid, and may thereupon proceed against the city under the original bond contract, without the operation of any prescription or novation and as is provided in section 1 of this act in the case of the extension of outstanding bonds.

SEC. 5. *Be it further enacted, etc.*, That in view of the enforcement by judicial process of the payment of past due bonds and coupons, with interest and costs, the city of New Orleans is hereby authorized and directed, in order to provide for the punctual payment of the interest and principal of all outstanding bonds and certificates for matured coupons extended, as provided in section 3, except Premium Bonds, to levy on all property within its territorial limits, liable to taxation for other purposes, at the same time and in the same way and on the same tax bill, and to be enforced and collected as are the ordinary city taxes, an annual tax sufficient to pay punctually the interest on all outstanding bonds and extended coupons as aforesaid, when due, which said tax shall never exceed one-half of one per cent. nor be less than one-quarter of one per cent. on the assessed valuation of all taxable property as aforesaid, and the proceeds of said tax shall be duly turned over as collected to the Board of Liquidation of the City Debt, in the same manner as the Premium Bond tax, to be by them deposited to the

credit of the City Debt Fund, and to be applied exclusively to the objects and purposes of this act.

SEC. 6. *Be it further enacted, etc.*, That all funds now, or that may be at the time of the passage of this act, in the hands of the Board of Liquidation of the City Debt under existing laws, shall be deposited with the Fiscal Agent of the Board to the credit of the account known as the City Debt Fund, which fund shall be applied exclusively to the purchase, on the most favorable terms, not exceeding par of the face value of any of the outstanding bonds or coupons, and the certificates therefor of said city, which are extended to be retired under the provision of this act; *provided*, that said City Debt Fund shall be used first to provide for, and pay the interest on the bonds and certificates contemplated herein; and it shall be the duty of the Council, in its annual budget, to make an appropriation to carry out the provisions of this act.

SEC. 7. *Be it further enacted, etc.*, That the surplus proceeds, if any, of the premium bond tax of each year remaining in the hands of the Board of Liquidation of the city debt, or surplus on hand at the time of the passage of this act, after all the drawn series, interest and premiums thereon, exigible or due to the holders thereof have been provided for or fully paid, shall also be deposited with the Fiscal Agent of the said board to the credit of the account known as the City Debt Fund, and applied exclusively as provided in section 5.

SEC. 8. *Be it further enacted, etc.*, That said Board of Liquidation shall render semi-annually to the Mayor of the city of New Orleans, for publication, a full statement of its operations during the previous six months, and give a detailed statement of all property and moneys received and disbursed, or disposed of within said period, and the purposes thereof.

SEC. 9. *Be it further enacted, etc.*, That the city of New Orleans is hereby authorized, and it shall be its duty, to

pass all necessary and proper ordinances, and to execute and sign all acts necessary to carry out the provisions of this act in relation to the settlement, adjustment and extension of the bonded debt aforesaid, as contemplated herein with the holders thereof, as herein described and designated, and to prepare and perfect the certificates and coupons required, and otherwise to do and perform what is herein required and directed.

SEC. 10. *Be it further enacted, etc.*, That this act, in all its parts, provisions, terms, conditions, obligations and limitations, is to be deemed and to constitute a valid, binding contract between the State of Louisiana, the city of New Orleans, its residents, citizens and taxpayers and the holders of the bonds herein authorized to be extended, and the judicial process of the State of Louisiana, now authorized by law or in force at the creation of said bonded debt as aforesaid, may be resorted to and is to be recognized and applied to the judges thereof, for the enforcement of its provisions in favor of any party having and showing just cause for complaint or injury or a violation of any of the provisions thereof.

SEC. 11. *Be it further enacted, etc.*, That it is hereby made a felony, punishable with fine not exceeding $5,000, and imprisonment at hard labor not exceeding five years, for the fiscal agent, the Mayor, or any other officer of the city of New Orleans, or of its clerks, subordinates, or employés of any description whatever, to feloniously misapply, misappropriate or embezzle any of the funds, taxes, assets or property designed in this act to liquidate and pay said bonded debt, or the interest thereof, or to divert the same, or any part thereof, from the legitimate use and purpose herein provided, and such person or persons, on conviction thereof, according to law, shall be punished accordingly.

SEC. 12. *Be it further enacted, etc.*, That any legal proceeding instituted to prevent, hinder, delay or obstruct the operation of this act, or any of its provisions, in whole or

in part, after its promulgation as a law, shall be tried summarily and by preference over all other causes or proceeding, whether the court, having jurisdiction, be in vacation or not; and if appealed to the Supreme Court of the State of Louisiana, it shall be tried and determined by preference, whether said court be in regular session or in vacation; and it is hereby made the duty of the judges thereof, if in vacation, to determine the controversy within the least delay, and the decree pronounced shall become final on the twentieth day thereafter, unless a rehearing be granted, in which latter event, the cause shall be heard *de novo* and determined by said court, and the decree pronounced thereon shall become final then without further delay.

SEC. 13. *Be it further enacted, etc.*, That this act shall take effect from and after its passage, and all laws or parts of laws inconsistent or in conflict therewith be and the same are hereby repealed.

R. N. OGDEN,
Speaker of the House of Representatives.
GEO. L. WALTON,
President pro tem. of the Senate.

Approved June 30, 1882.

S. D. McENERY,
Governor of the State of Louisiana.

A true copy:
WILL. A. STRONG,
Secretary of State.

No. 81.] AN ACT

Entitled an act to authorize the city of New Orleans, in the sale or lease of franchise or right of way for street railroads, or other privileges, to apply the price paid for the same in the performance of works of public improvements, of a permanent character, such as paving streets, embellishing parks, etc.

Whereas, Notice, as required by Article 48 of the Constitution has been given of the intention to apply for the passage of this act; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That hereafter, whenever the city of New Orleans, through her proper authorities, shall contract with private corporations, or individuals, for the sale or lease of public privileges or franchises, such as the right of way for street railroads or for other public undertakings, within her legal power and control, the price paid for the sale or lease of public privileges or franchises shall be applied by said city in the performance of works of public improvement of a permanent character, such as paving streets, embellishing parks, etc.

SEC. 2. *Be it further enacted, etc.*, That all laws or parts of laws, and especially so much of Section 10 of Act No. 31, Acts of 1876, known as the Premium Bond Act, and of Section 5 of Act No. 133, Acts of 1880, as may be in conflict herewith, be, and the same are hereby, repealed.

R. N. OGDEN,
Speaker of the House of Representatives,
GEO. L. WALTON,
President pro tem. of the Senate.

Approved July 5, 1882.

S. E. McENERY,
Governor of the State of Louisiana.

A true copy:
WILL. A. STRONG,
Secretary of State.

No. 20.] AN ACT

To incorporate the city of New Orleans, provide for the government and administration of the affairs thereof; and to repeal all acts inconsistent and in conflict with its provisions.

Due public notice having been given according to requirements of Article 48 of the Constitution.

* * * * *

SEC. 2. The Legislative power of said corporation shall be vested in a council composed of thirty members; they must be citizens of the State not less than twenty-five years of age, residents of the districts from which elected, resident of New Orleans for five years next preceding their election.

* * * * *

SEC. 8. The Council shall also have power (1) to order the ditching, filling, opening, widening, and paving of the public streets and to regulate the grade thereof; (2) to regulate the public cemeteries, to order the manner of conducting the same and to order the closing of same; (3) to compel the owners of any lot or lots to fill the same to a grade above the grades of the streets and to construct drains or gutters; (4) to improve and embellish public squares and parks and places; (5) to prescribe and collect wharfage and levee dues and to erect sheds over the wharves and buildings, to protect merchandise and to make such charges therefor as will pay for the construction, keeping in repair, lighting, and policing of such wharves and sheds and no more. The Council may lease or farm out the wharves and landings in section for a period not exceeding ten years to such persons as will bind themselves with security to construct and keep in good repairs such wharves and landings, and construct and keep in repairs sheds over the wharves, and light the same and pay for the cost of policing the same for such just and reasonable charges on vessels and merchandise or either for the use of the wharves and sheds as may be fixed in advance by the Council, and with such spe-

cifications as may be required by them. The Council shall have power (6) to compel the owners of property or tenants to keep their sidewalks in front of such property clean and in repair; (7) to prevent explosive and dangerous substances from being stored or kept in dangerous quantities in the city, to designate the places where such dangerous articles may be stored and to regulate the manner of hauling and keeping explosive substances; (8) to determine within what limit wooden buildings shall not be erected and to prevent the reconstruction in wood of old buildings within such limits; (9) to regulate the safety, height, and thickness of the walls and structures; (10) to determine what animals shall not be permitted to rove in the limits of the city, and to cause them to be killed or to be confined and sold, when found to be roaming at large; (11) to regulate the police of theatres, public balls, dance-houses, concert saloons, taverns, hotels, houses of public entertainment, shops, or places for retailing alcoholic liquors, houses of prostitution and assignation, and to exclude such houses from certain limits and shall have power to close the same, and to close houses and places for the sale of intoxicating liquors when the public safety may require it, and to authorize the mayor and police to close such places; (12) to close all gambling-houses and to expel from the city, and to imprison all bunko men, fraudulent or unauthorized lottery men, common cheats and swindlers, beggars, and dangerous and suspicious characters; (13) have the power to authorize the use of the streets for horse and steam railroads and to regulate the same, to require and compel all lines of railway or tramway in any one street to run on and use one and the same track and turn-table, to compel them to keep conductors on their cars, and compel all such companies to keep in repair the street-bridges and crossings through or over which their cars run; (14) *to lay off* and sell in lots or squares, so much of the batture from time to time, as may not be required for public purposes, but the right of accretion or to future

batture shall never be sold; (15) to establish jails, houses of refuge, reformation, and correction, and make regulations for their government, and to exercise a general police power in the city of New Orleans.

* * * * *

SEC. 75. For the organization of the first government under this charter, the Governor is hereby directed to issue his proclamation, ordering an election on the first Tuesday after the first Monday of November, eighteen hundred and eighty-two, (1882), for Mayor, Comptroller, Treasurer, Commissioner of Public Works, and Commissioner of Police and Public Buildings, four Recorders and thirty Councilmen, as provided for by this act; said terms of Mayor, Comptroller, Treasurer, Commissioner of Public Works, Commissioner of Police and Public Buildings, four Recorders and thirty Councilmen, shall end on the Tuesday next following the third Monday in April, eighteen hundred and eighty-four, (1884), and the said election to take place every four years thereafter on the Tuesday next following the third Monday in April.

SEC. 76. The officers elected at the first election, to be held under this charter, shall assume the duties of their respective offices on the third Monday of November, A. D. eighteen hundred and eighty-two (1882.)

Approved June 23d 1882, being prior to either of the foregoing acts.